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RECORD, CASE No. 13,918.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO., 286. 55

WILLIAM H. KNAPP AND CHARLES L. KNAPP,
APPELLANTS,

vs.

CHARLES A. MORSS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

FILED NOVEMBER 13, 1889.

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1 Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS
vs.
WM. H. and CHARLES L. KNAPP. } No. 538. In Equity.

The above-named Wm. H. and Charles L. Knapp, conceiving themselves aggrieved with the final decree entered on the 14th day of October, 1889, do hereby appeal therefrom to the Supreme Court of the United States, and they pray that their appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the Supreme Court.

JOHN K. BEACH,
Solicitor for Defendants.

Appeal allowed Oct. 26th, 1889, being in open session of court, during the term at which the decree sought to be reviewed was passed.

N. SHIPMAN,
District Judge.

2 Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS
vs.
WM. H. and CHARLES L. KNAPP. } No. 538. Equity. Bond for Damages and Costs.

Know all men by these presents that we, Wm. H. Knapp, of Brooklyn, New York, and Charles L. Knapp, of New Haven, as principals, and Alfred E. Blakeslee, of New Haven, as surety, are jointly and severally held and firmly bound unto the above-named Charles A. Morss in the sum of fifteen thousand dollars, to be paid to the said Charles A. Morss; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our successors, heirs, executors, and administrators, jointly and severally, firmly by the presents.

Sealed with our seals and dated the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas the above-named Wm. H. and Charles L. Knapp have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the district of Connecticut:

Now, therefore, the condition of this obligation is such that if the above-named Wm. H. and Charles L. Knapp shall prosecute their said appeal to effect and answer all damages and costs if they shall

fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

WILLIAM H. KNAPP. [L. S.]
CHARLES L. KNAPP. [L. S.]
ALFRED E. BLAKESLEE. [L. S.]

3 Sealed and delivered and taken and acknowledged this 25th day of October, 1889, before me—

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

Bond is approved Oct. 26, 1889.

N. SHIPMAN,
District Judge.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

Alfred E. Blakeslee, of New Haven, Connecticut, being duly sworn, deposes and says that he is a resident and householder of the district of Connecticut, and that he is worth the sum of thirty thousand dollars above all his just debts and liabilities.

ALFRED E. BLAKESLEE.

Sworn to this 25th day of October, 1889, before me—

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of New York.

4–6 *The Return of the Judges of the Circuit Court of the United States for the District of Connecticut to the Foregoing Appeal.*

The bill, answer, and pleadings, evidence, and proceedings whereof mention is therein made follow in these words, viz:

CHARLES A. MORSS *vs.* W. H. KNAPP *et als.* } No. 538. In Equity.

Be it remembered that on the 18th day of December, 1886, there was filed in this court a bill in equity in the words and figures following, viz:

7 Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS *vs.* W. H. KNAPP *et al.* } In Equity.

To the honorable the judges of the circuit court of the United States for the district of Connecticut:

Charles A. Morss, of Boston, in the Commonwealth of Massachusetts, and citizen of said Commonwealth, brings this his bill of complaint against W. H. Knapp, C. L. Knapp, and Clinton I.

Hague, all of New Haven, in the State of Connecticut, and co-partners in business under the firm name and style of The Union Form Company.

And thereupon your orator complains and says—

1. That John Hall, of Watertown, in said Commonwealth of Massachusetts, being the first and original inventor of certain new and useful improvements in adjustable dress forms, fully described in the letters patent hereinafter mentioned, and which had not been known or used before his said invention, and which at
8 the time of his application for a patent had not been for more than two years in public use or on sale, and being a citizen of the United States, upon due application therefor, on the twelfth day of October, A. D. 1880, he obtained letters patent of the United States in due form for the said invention numbered 233,240, whereby there was granted to him and his legal representatives for the term of seventeen years from the date thereof the exclusive right of making, using, and vending to others to be used the said invention and improvement described in said letters patent, and by virtue thereof the said John Hall became the sole owner of the said invention and improvements; which letters patent, or a true copy thereof, are ready to be produced in court.

And the complainant further says that said letters patent No. 233,240 were duly assigned to him by said John Hall on the twenty-seventh day of April, 1886, and duly recorded in the Patent Office of the United States on the first day of May, 1886, Liber R. 34, folio 119, and the complainant is now the sole owner of said letters patent and of all rights thereby secured.

9 2. Your orator further shows that since the issue of said letters patent the said John Hall and your orator have been put to great trouble and expense to cause the said invention to be embodied in articles of manufacture and to be manufactured, sold, and used and made useful to the public, and your orator has been and is manufacturing and selling the same, and the said invention and letters patent are of great value to him.

3. Your orator further shows that the public from the issue of said letters patent have acquiesced in the rights of the patentee aforesaid and fully conceded the same and not in any way denied, disputed, or infringed them to your orator's knowledge.

4. Yet the defendants, well knowing the premises, but contriving and intending to injure your orator and to deprive him of the benefits and advantages which might and otherwise would have accrued to your orator from said letters patent, did, without his license or allowance and against his will and in violation of his rights and infringement of said letters patent, wilfully, wrongfully, and in defiance of his said rights make, use, and vend to others to
10 be used the said invention, and did cause the same to be done, and did advertise and hold themselves out to the public as ready and desirous to make and sell to others to be used articles of manufacture embodying and containing the said invention secured to your orator as aforesaid, and they still continue to do all said acts, and although frequently requested by your orator

to desist and refrain therefrom, yet they refused and still refuse so to do, but say they will continue to do the said acts.

5. Your orator further shows that the articles of manufacture made and sold by the defendants as aforesaid contain the several devices set forth and claimed in the second claim of said letters patent so as to operate as and for the purpose set forth in the complainant's letters patent and being the same or substantially the same invention claimed in the said letters patent and secured to your orator as aforesaid.

6. Your orator further shows that the aforesaid acts of the
11 defendants are all in defiance of the said rights of your orator and to his great and irreparable injury, by which he has been and still is deprived of great gains and profits which he would otherwise have obtained, but which are being received and enjoyed by the defendants.

7. Your orator avers that the defendants have made a large number of articles such as are referred to above, and sold and used the same, and have a large number on hand which they are using, but how many have been so made, sold, or used and how much profit the defendants have realized therefrom your orator does not know and he prays a discovery thereof.

8. Your orator prays a discovery of the particular manner in which said acts have been carried on by the defendants, and that they may particularly and fully set forth how they have been engaged in said business and how long they have been engaged therein.

9. And forasmuch as your orator can have no adequate relief except in this court, to the end, therefore, that said defendants may, if they can, show why your orator should not have the relief
12 hereby prayed for, and may, upon their corporal oaths and according to their best and utmost knowledge, remembrance, information, and belief, full, true, and perfect answer make to the premises, and may be compelled to account for and pay to your orator the profits by them acquired and the damage suffered by your orator from said unlawful acts, and that the said defendants and their servants, agents, workmen, and attorneys may be enjoined and restrained by the order of this court from directly or indirectly making, using, vending, delivering, working, or putting into practice, operation, or use, or in any way counterfeiting or imitating the said invention or any part thereof or any article made in accordance therewith or like or similar to those which they have heretofore so made, used, and sold, and that the said defendants may be decreed to pay the costs of this suit, and that your orator may have such further relief as to this honorable court shall seem proper and agreeable to equity—

May it please your honors to grant unto your orator the
13 writ of injunction, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said defendants and their servants, agents, and attorneys, confederates and workmen and each of them, as is hereinbefore prayed.

Also may it please your honors to grant unto your orator the

writ of subpœna issuing out of and under the seal of this honorable court, directed to the said defendants, commanding them by a certain day and under a certain penalty to be and appear in this court, then and there to answer the premises and to stand and abide such order and decree as may be against them.

And also may it please your honors to grant to your orator a summons to said defendants directing them to show cause, if any they have, why an injunction should not issue restraining and enjoining said defendants, their agents, attorneys, confederates, and workmen, as above prayed for, during the pendency of this suit and until a perpetual injunction shall issue or other final decree be made in this cause.

CHAS. A. MORSS.

WM. A. WRIGHT,
Of New Haven, Solicitor & of Counsel for Compl't.

14 COMMONWEALTH OF MASSACHUSETTS, } ss:
Suffolk County, }

BOSTON, *December 15th*, 1886.

Personally appeared Charles A. Morss and made oath that he has read the above bill of complaint and that the same is true except as to those matters stated on information and belief, which he believes to be true.

Before me—

THOS. H. WAKEFIELD,
[SEAL.] *Notary Public.*

And on the same day a writ of subpœna issued out of court directed to the said respondents, which was duly served and returned, and which, with the return of service endorsed thereon, is in the words and figures following, viz:

15 [L. S.] The President of the United States of America to the marshal of the district of Connecticut sendeth greeting:

You are hereby commanded to summon W. H. Knapp, C. L. Knapp, & Clinton I. Hague, all of New Haven, in the State of Connecticut, copartners under the firm name of the Union Form Company & located & doing business in the town of New Haven, in the State and district of Connecticut, named respondents in the bill of complaint herein, to appear before the judges of the circuit court of the United States of America for the district of Connecticut, in the second circuit, in equity, on the first Monday of February, 1887, wheresoever the said court shall then be, to answer a bill of complaint exhibited against said respondents in said court by Charles A. Morss, of Boston, Massachusetts, and a citizen of said State of Massachusetts, and then and there to answer the same, and to do and abide by what said court may order and decree in the premises.

Make due service and return at least twenty days before said first Monday of February, 1887.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Hartford, this 18th day of December, A. D. 1886.

E. E. MARVIN, *Clerk.*

The defendants are required to enter their appearance in said cause in the clerk's office of said court on or before the day at which this writ is returnable or by the rules of said court said bill will be taken as confessed.

E. E. MARVIN, *Clerk.*

WM. A. WRIGHT,
New Haven, Ct., Complainant's Solicitor.

15½ [Endorsed:] No. 538. United States circuit court, district of Connecticut. In equity. Charles A. Morss against W. H. Knapp *et al.* Writ of subpœna. Issued Dec. 18th, 1886; returnable Feb'y rule day, 1887. Returned & filed Jan. 17, 1887. E. E. Marvin, cl'k.

DISTRICT OF CONNECTICUT, } ss:
New Haven County, }

Then and there I served the within writ on Clinton I. Hague, and on December 31st, 1886, at said New Haven, I served the within writ on C. L. Knapp, and on January 17th, 1887, I served the within writ on W. H. Knapp, by delivering to and leaving with said Clinton I. Hague and C. L. Knapp and by leaving with John K. Beach, defendants' attorney, for W. H. Knapp, a true and attested copy hereof.

Attest:

NATHAN D. BATES,
U. S. Marshal,
By FRANK M. LOVEJOY,
Deputy U. S. Marshal.

NEW HAVEN, CONN., *Jan. 17th,* 1887.

I accept service for W. H. Knapp.

JOHN K. BEACH,
Att'y for Def'ts.

Fees.

Service	6 00
Copies	1 50
Travel	50
Endorsements	
	$8 00

16 And on the same day Wm. A. Wright, Esq., appeared for the complainant, and on the 19th of January, 1887, Messrs. J. S. & J. K. Beach appeared for the respondents, and on the 2d of March, 1888, Charles F. Perkins, Esq., appeared for the complainant,

and on the 28th of March Payson E. Tucker, Esq., appeared for the complainant, and on the 7th day of March, 1887, respondents' answer was filed in the words and figures following, viz:

Circuit Court of the United States, District of Massachusetts.
In Equity.

CHARLES A. MORSS
vs.
W. H. KNAPP *et al.*

Defendants' Answer.

W. H. Knapp, C. L. Knapp, and Clinton I. Hague, defendants, for answer to so much of the bill of complaint herein as they are advised that it is material for them to answer, answering say:

That they are informed and admit that letters patent of the United States, dated October 12th, 1880, and numbered 233,240, were issued to John Hall, but as to whether the complainant is now the sole owner of said patent by assignment as alleged in said bill of complaint, they have no knowledge or information and leave the complainant to such proof thereof as he may be advised.

17 They have no knowledge or information as to whether the complainant has been put to expense and trouble in manufacturing articles in conformity with said patent or whether said patent is of great value to the complainant, and they leave the complainant to such proof of these matters as he may be advised.

They deny that the public have acquiesced in any alleged rights of the complainant based upon said patent.

They deny that they have infringed upon, or intend to infringe upon, any of the exclusive rights purporting to be conveyed by said patent.

The defendants further answering say that they have been engaged in the business of manufacturing adjustable dress forms, made in strict conformity with the following letters patent of the United States, by and with the consent and allowance of the respective patentees:

Letters patent issued to William H. Knapp and Charles L. Knapp, November 13th, 1883, numbered 288,452.

Letters patent issued to William H. Knapp and Charles L. Knapp, December 25th, 1883, numbered 290,990.

Letters patent issued to William H. Knapp and Charles L. Knapp, November 11th, 1884, numbered 307,960.

The defendants further answering on information and belief deny that said John Hall was the first and original inventor of the improvements in dress forms described and claimed in said letters patent, but aver that the same or all substantial or material parts thereof were, long prior to any alleged invention thereof by

18 said Hall, shown and described in the following letters patent of the United States, to wit:

To C. W. Wilson, May 3d, 1870, No. 102,638; to F. A. Balch,

September 17th, 1867, No. 68831; to S. B. Ferris, August 27th, 1878, No. 207,351; to C. Franke, September 7th, 1875, No. 167,394.

The defendants further answering deny that any other matter or thing contained in said bill of complaint, and material for the defendants to make answer unto, is true to the knowledge or belief of the defendants; and they pray to be hence dismissed with their costs.

CHARLES L. KNAPP,
For the Union Form Co.

J. S. & J. K. BEACH,
Solicitors — of Counsel for Defendants.

STATE OF CONNECTICUT, } *ss:*
County of New Haven, }

Before me personally appeared Charles L. Knapp, one of the defendants herein, and made oath that the statements made in the foregoing answer, so far as made on his personal knowledge are true; and so far as made on information and belief he believes them to be true.

FRANCIS G. BEACH,
[SEAL.] *Notary Public.*

And on 9th day of April, 1887, replication was filed in the words and figures following, viz:

19 Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS } In Equity.
vs.
W. H. KNAPP *et als.* }

Replication.

The replication of Charles A. Morss, complainant, to the answer of W. H. Knapp *et als.*, defendants.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall

direct, and humbly prays as in and by his said bill he has already prayed.

CHAS. F. PERKINS,
Solicitor and of Counsel for Complainant.

20 And on the 24th day of February, 1888, stipulation as to evidence was filed in the words and figures following, viz:

Circuit Court of the United States, District of Connecticut. In Equity.

CHARLES A. MORSS
vs.
WM. H. KNAPP *et al.* } Stipulation.

It is stipulated that the testimony in this cause shall be the testimony taken and to be taken in a suit now pending in the district of Massachusetts in which the said Chas. A. Morse is complainant and Samuel N. Ufford and Son defendants, and brought for infringement of the patent on which this bill of complaint is based.

It is stipulated that the record in this cause shall be made by filing with the clerk of the court a printed copy of said testimony, together with duplicates of the exhibits in evidence in said suit of Morss *vs.* Ufford and Son, the said testimony and exhibits to be filed on or before the third Tuesday of September, 1887, at the opening of the court on said day.

CHAS. F. PERKINS,
Of Counsel for Complainant.
JOHN K. BEACH,
Of Counsel for Defendants.

21 And on the same day evidence for complainant was filed in the words and figures following, viz:

Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS
v.
W. H. KNAPP *et al.* } In Equity.

Evidence for Complainant,

Taken pursuant to the sixty-seventh rule of the Supreme Court of the United States, in equity, as amended, before me, Thomas H. Wakefield, special examiner.

Present: Charles F. Perkins, Esq., of counsel for complainant; John K. Beach, Esq., of counsel for defendants.

BOSTON, *June* 4, 1887.

Counsel for complainant offers in evidence letters patent of the United States granted to John Hall for improvement in adjustable dress forms, No. 233,240, dated Oct. 12, 1880, and the same are marked "Complainant's Exhibit A, T. H. W., examiner."

It is stipulated by the respective counsel that uncertified Patent Office copies of the specifications and drawings of letters patent of the United States may be introduced in evidence by both parties hereto with the same force and effect as though duly certified by the Commissioner of Patents.

Counsel for complainant offers in evidence a dress form, and the same is marked "Complainant's Exhibit Defendants' Dress Form, T. H. W., examiner."

22 It is mutually agreed by counsel for the respective parties that the Complainant's Exhibit Defendants' Dress Form was sold by the defendants since the complainant became the owner of letters patent No. 233,240, and before the filing of the bill of complaint in this cause.

Attest: THOS. H. WAKEFIELD,
Special Examiner.

Deposition of James Shepard.

BOSTON, *June* 4, 1887.

Direct examination by CHARLES F. PERKINS, Esq., of counsel for complainant:

Int. 1. State your name, age, residence, and occupation.

Ans. James Shepard; age, forty-nine; reside at New Britain, Conn.; am a solicitor of patents.

Int. 2. What experience have you had as a solicitor of patents and expert in patent causes?

Ans. I have been a solicitor of patents since 1866, and during the last fourteen years I have very frequently each year testified as an expert before the United States circuit courts in causes pertaining to patents.

Int. 3. Have you examined letters patent No. 233,240; and if so, do you understand the same?

Ans. Yes; to both branches of the question.

Int. 4. Will you state what differences and resemblances, if any, you find between the Exhibit Defendants' Dress Form and the invention described and claimed in complainant's patent No. 233,240?

Ans. The patent No. 233,240 says: "My invention relates to improvements in dress forms, by means of which every part of the device is rendered adjustable, so that it may be applied to a dress of any size or style, and fill it out perfectly, in order that trimming may be placed upon it, etc. The mechanism for accomplishing this result is illustrated in the accompanying drawings."

The drawings show and the specification describes an entire dress form made adjustable, so as to contract or enlarge it circum-

23 ferentially, which adjustable form is suspended from the outer ends of several series of braces, the inner ends of the braces being provided with adjusting mechanism for adjusting them up or down on a central standard, and thereby contract or expand the form as an entirety, or by adjusting only one or more set of braces, to thus contract or expand the form at different points.

There are five sets of these braces, two double sets being arranged within the upper part of the skirt form and the waist, and a single set being arranged at the lower part of the skirt form.

I find in the Exhibit Defendants' Dress Form an entire dress form, including both the skirt and the waist form, which form is also adjustable to contract or expand it circumferentially, and is also suspended from the outer ends of several series of braces.

These braces, like those in the patent, consist of five sets or series, two being double sets for adjusting the upper part of the skirt form and waist form, and the other single set being for adjusting the lower part of the skirt form. These braces are also hung upon a central standard, and provided with means for adjusting them thereon; so that the Exhibit Defendants' Dress Form is substantially the same dress form that is shown and described in said Hall patent, and operates in the same way, by substantially the same or equivalent means, and producing the same result. There are differences in the minor details which I consider it unnecessary to specify.

While this Hall patent shows and describes a complete dress form, it specifically mentions that the waist and skirt forms may be used separately, if desired. The second claim makes reference to the combination of the standard, the adjustable form for the skirt portion, which is formed of ribs, the double set of braces at the upper end of the skirt form, and the sliding blocks and rest which constitute the mechanism for adjusting the braces.

The defendants' device contains in combination the standard and series of ribs comprising the skirt form, the same being suspended from outer ends of braces, the double set of braces for expanding and contracting the upper end of the skirt form, and mechanism for adjusting and holding braces in these, thus adjusting the form. This operating and holding mechanism differs somewhat from that described in the patent in suit. For instance, the upper rest or
24 collar is fastened to the standard by a pin instead of a set-screw, and the adjustable block to which the inner end of the braces is hinged is in the form of a nut on the threaded portion of the standard, whereby the threads serve not only as a means for adjusting the block up or down, but also of holding it from slipping lengthwise on the standard.

Such a nut and threaded standard for adjusting the inner end of hinged braces thereon was a known equivalent at the date of the Hall patent in suit for a sliding block and fastening collar or rest, one example of such equivalent being shown in the patent No. 167,394, to Charles Franke, dated Sept. 7, 1875.

For these reasons I am of the opinion that the defendants' dress form contains the combination shown and described in the Hall patent, No. 233,240, and referred to in the second claim thereof, said dress form containing each of the elements therein referred to, or their known equivalent, all combined and operating substantially the same way, and producing the same result.

Cross-examination by JOHN K. BEACH, Esq., of counsel for defendants:

Cross-int. 5. The specification of the patent, as you have quoted it, states that the invention "relates to improvements in dress forms, by means of which every part of the device is rendered adjustable;" do you understand that the patentee, in using that language, drew any distinction between a dress form composed of a number of segments which were capable of being contracted and expanded together and uniformly, as in the Franke patent to which you have referred, and a dress form, each of whose segments was capable of a separate adjustment?

Ans. No, not necessarily.

Cross-int. 6. It is true, is it not, that the specification and drawings describe and show mechanism for accomplishing the adjustment of every part of the dress form, so that the contour or shape of the dress form may be altered at any desired place by separate adjustment of the ribs at that place?

Ans. Not exactly. In the lower part of the skirt form means are provided for projecting some of the segments or ribs separately from the others to change the contour; but the segments or ribs which compose the upper part of the skirt form I understand to be all expanded or contracted necessarily together, so that one cannot be expanded more than another.

Cross-int. 7. Are the separate ribs of the waist form adjustable, independently of each other?

Ans. Not by moving the block to which they are hinged up and down upon the standard, excepting in so far as the braces are of different lengths, and the longer ones will require greater expansion than the shorter ones upon a given movement of the block to which they are hinged. I understand also that the side ribs *l* have an extension slide, by means of which these ribs can be adjusted independent of the other ribs *l* of the waist form.

Cross-int. 8. At line eighty-three of the second column of the first page of the specification, the patentee, in speaking of the waist form, says: "The braces *n n* are all connected with slides *o o* and the sliding blocks *pp*;" am I right in supposing that the object of the slides *o o*, which appear to be attached to each rib of the waist form, is to enable each rib to be set to a desired position, independently of the other?

Ans. You are. I have not paid so particular attention to the manner of adjusting the waist form as to the skirt form, and find that I first misunderstood the construction of the slides *o*. They are applied to all the ribs of the waist form instead of to the side ribs only, as I at first supposed.

Cross-int. 9. In comparing the Exhibit Defendants' Dress Form with the combination described in claim 2 of the patent, did you intend to draw a distinction between the skirt-form portion and the waist-form portion of that exhibit?

Ans. Yes; because I understand claim 2 to relate particularly to

the skirt form, independently of the fact of whether or not a waist form is employed in connection with it.

Cross-int. 10. Am I right in understanding that claims 1, 3 and 4 of the patent refer to or embody mechanism for adjusting individual portions or ribs, independently of the other parts of the form?

Ans. I so understand them.

26 Cross-int. 11. Do you mean to be understood as saying that if in the Exhibit Defendants' Dress Form the skirt-form portion were cut away and removed, the remaining waist-form portion, with its adjusting mechanism, would not come within the description of devices contained in claim 2?

Ans. No; I do not wish to be so understood, because I have not considered the exhibit in that light; had considered it with especial reference to the skirt form and its adjusting mechanism.

Cross-int. 12. Then your previous testimony is not to be taken as expressing the opinion that the waist portion of the Exhibit Defendants' Dress Form, apart from the skirt-form portion, contain*ing* the combination referred to in the second claim?

Ans. I did not intend to express any opinion on that point, and consequently my testimony should not be considered as saying that the defendants' waist form contains the ribs of the skirt form. Otherwise, I think that the testimony which I have given is applicable to the exhibit in the changed form contained in the question.

Cross-int. 13. Do you find in the Exhibit Defendants' Dress Form identically the ribs *c c* of the patent in suit?

Ans. No, not specifically.

Cross-int. 14. Do you find in the Exhibit Defendants' Dress Form the rests h^1 and h^2, specifically as set forth in the second claim of the patent?

Ans. h^2, yes; h^1, no. The rest h^2 of the patent is the collar pinned to the shaft or upright at a point just above the block to which the upper series of the double set of braces are hinged at the upper end of the skirt form.

Cross-int. 15. Do you find in the Exhibit Defendants' Dress Form identically the sliding blocks f^1 f^2, contained in the second claim of complainant's patent?

Ans. No; because, as I have before stated, one of them is screw-threaded on the interior, and both of them, I should also add, differ in the matter of design or form.

Cross-int. 16. Then, in your testimony comparing the Exhibit Defendants' Dress Form with the second claim of the patent in suit, you have assumed, have you not, that the claim fairly includes mechanical equivalents of each of the specific devices mentioned therein?

27 Ans. Yes, with reference to the sliding blocks and rest, but not to the other elements of the combination, as I consider said other elements substantially the same.

JAMES SHEPARD.

Attest: THOS. H. WAKEFIELD,
Special Examiner.

Evidence for Complainant in Reply,

Taken pursuant to the sixty-seventh rule of the Supreme Court of the United States in equity, as amended, before me, Thomas H. Wakefield, special examiner.

Present: Charles F. Perkins, Esq., of counsel for complainant; John K. Beach, Esq., of counsel for defendants.

BOSTON, *July* 23, 1887.

Counsel for complainant puts in evidence, by agreement, an assignment from John Hall to Charles A. Morss, of letters patent of the United States, No. 233,239, dated Oct. 12, 1880, to John Hall; of letters patent of the United States, No. 236,887, dated Jan. 25, 1881, to John Hall; of letters patent of the United States, No. 233,240, dated Oct. 12, 1880, to John Hall; of letters patent of the United States, No. 243,703, dated July 5, 1881, to John Hall; and of letters patent of the United States, No. 269,851, dated Jan. 2, 1883, to John Hall, and the same is marked "Complainant's Exhibit B, T. H. W., examiner."

Deposition of James Shepard.

Direct examination by CHARLES F. PERKINS, Esq., of counsel for complainant:

BOSTON, *July* 23, 1887.

Int. 1. State your name, and whether you have previously given your deposition in this cause.

Ans. James Shepard; I have.

28 Int. 2. Please compare the invention shown and described in the letters patent of the complainant, No. 233,240, and particularly set forth in the second claim thereof, and also the skirt form of Complainant's Exhibit Defendants' Dress Form, with the state of the art prior to the application for said patent, so far as the same is disclosed by the letters patent put in evidence by the defendants.

Ans. Comparing complainant's dress-skirt form, as shown in said patent, with said prior art, I find the patented skirt form to be the first garment form resembling the shape of a garment and capable of giving its shape thereto in which the entire periphery is adjustable diametrically.

It is also the first garment form composed of a series of ribs that are adapted to move to and from the central standard at their upper ends.

It is also the first skirt form in which the entire circumference at the upper end can be adjusted diametrically.

It is also the first skirt form which is swivelled upon the standard.

It is also the first skirt form of any kind supported at its upper ends by a double set of braces.

It is also the first skirt form having a double set of braces at its upper end and a single set of braces at its lower end.

It is also the first patent or instance in said art where a proper skirt form is shown.

In making this latter statement, I do not overlook the patent to Wilson, for I consider that the device therein shown is in the nature of a horse or frame for supporting a rigid skirt while it was being built, instead of a device for giving form to and exhibiting a garment composed of a thin, flexible fabric, like the skirt form of the Hall patent.

Neither do I overlook the patent of Everett, which, in fact, comprises the entire prior state of the art in skirt exhibitors, as declared by the defendants' record, and this skirt exhibitor does not show an entire skirt form, but only a waist block with a short flange depending therefrom.

I also find that each feature of novelty which I have specified for the skirt form of complainant's patent, No. 233,240, is embodied in the skirt form of Complainant's Exhibit Defendants' Dress
29 Form, so that the latter differs from the prior art in the same particulars in which the skirt form of the complainant's patent does.

Int. 3. In the deposition of Mr. Earle, in answer to Int. 5, it is stated that in defendants' form "the collar to which the upper end of the upper series of braces is hinged, instead of being the sliding block f^2, as required by the second claim, is a collar fixed to the standard or shaft without any capacity for being moved either up or down." In that answer he evidently assumes that the upper slide of the complainant's patent must be capable of a vertical movement upon the standard. Do you so understand the construction of the device of the complainant's patent?

Ans. I do not. As I understand the patent, it is immaterial whether the block f^2 and the rest h^2, immediately above it, are adjustable up and down or not. I am also of the opinion that, as shown and described in the patent, the device is intended to be used by fixing the collar or rest h^2 in the proper position upon the standard, and then let it remain in that position without changing it at all up and down in the ordinary adjustment of the device.

The patent nowhere sets out any object for moving the block f^2 up and down, or of changing the position of the rest or roller h^2. The only thing I find in the patent which would lead Mr. Earle to think that the block f^2 must move up and down on the standard, is because the patent calls it a sliding block; but I find the patent uses the word "slides" in a rather unusual sense. For instance, it says in lines forty-eight and forty-nine, page 1, "the block f slides upon the rest or support h." This language clearly refers, under the term "slides," to the rotary motion of the dress form, instead of to a movement of the block longitudinally with the standard.

I also find that in the Exhibit Defendants' Dress Form, the block to which the inner ends of the upper series of braces at the upper end of the skirt form are hinged, slides upon the standard in the same sense that such term is used in the Hall patent.

If Mr. Earle were correct in supposing that both of the blocks f^1 and f^2 shall move longitudinally on the standard, in order to contract or expand the upper end of the skirt form, then it would follow that the contraction of the upper end of the skirt form
30 would necessarily expand the middle portion of the waist form. This would be impracticable, and it is evident that no such mode of operation is contemplated by the patent.

To simultaneously move longitudinally on the standard in opposite directions, both rests h^1 and h^2, and both sliding blocks f^1 and f^2, would be very difficult, if not impossible, for one person to accomplish; and furthermore, it would give no better result than it would to work in accordance with the directions of the patent, and move longitudinally on the standard, only the lower sliding blocks f^1 and its rest h^1.

Int. 4. In the answer referred to in the last preceding interrogatory, Mr. Earle says, referring to the collar to which the lower set of braces is attached in the defendants' form: "And while the collar, so far as it serves to carry the lower end of the braces, corresponds to the sliding block f^1 of the patent, it has not the sliding capacity of the block, and hence is not the sliding block f^1 of the second claim." What, if anything, have you to say about it?

Ans. The only difference that I can see, as far as their sliding motion is concerned, between the two blocks, is that one slides upwards and downwards in a spiral path in moving longitudinally on the standard, instead of sliding in a direct line. They both ultimately reach the same point with reference to the length of the standard, and perform the same office.

Int. 5. Whether or not the defendants' lower collar possesses the sliding capacity of the complainant's slide f^1, in the sense in which the word "slide" is used in the patent?

Ans. Yes; it enables the dress form to be rotated on the standard to bring any desired side in view of the user, and this is the sense in which the term "slides" is used in the patent at the portion quoted.

Int. 6. In the answer of Mr. Earle above referred to, he says: "Because, then, of the absence in defendants' form of the elements essential to combination in the second claim, or any equivalents therefor, and because of the function due to the combination recited in the second claim of the patent being entirely absent from the defendants' form, I do not find in defendants' form the invention described in complainant's patent, and particularly recited in the second claim thereof." Is there any part set forth in the
31 second claim of the patent, or any function designed by the arrangement of parts claimed therein, which you do not find in the defendants' dress form?

Ans. There is not. The defendants' dress form has every element named in the second claim, and performs every function described in the specification for said parts. It has got the central supporting standard, the series of ribs which compose the skirt form, the double braces or two sets of braces connected to the upper ends of the skirt form, the true sliding blocks, to which such two sets of

braces are pivoted at their inner ends, and it has rests on the standard for holding said blocks against longitudinal movement on the standard, all combined substantially as described in the specification, the braces, blocks and rests being for adjusting the upper end of the skirt from diametrically, as specified in the patent.

Int. 7. Please examine the Int. 7 and answer thereto, in the deposition of Mr. Earle, and state whether you agree with him in his conclusions; and if not, state why.

Ans. I do not agree with him in his conclusions, because, among other reasons, neither of the Franke patents show the principal novelty of the complainant's patent; namely, a dress-skirt form or garment form in which its entire periphery is adjustable diametrically. In fact, these patents do not show a skirt form of any kind. One is a device for stretching pantaloons and steaming them to shape, and the other is a device for shaping coats in like manner. In both of them the form proper is not adjustable at all, but the forms are provided with adjustable side strips connected to the non-adjustable parts of the form. Neither of these Franke patents show the two series of opposing braces applied to one end of a garment form; neither of them show a series of ribs combined to constitute a garment form, and adapted to be adjusted diametrically on all sides.

The comparison which Mr. Earle makes between the two sets of braces in the Franke patents and the defendants' dress form and the form of complainant's patent, with reference to the latter having two sliding collars, is one which cannot be fairly made, because in the Franke patents there are no two sets of opposing braces for expanding any one part of the form. On the contrary, there is a single set of braces for a side piece or pieces, and another set of braces
32 for the lower part of the form, and in one of these patents there is a middle brace for another part of the form; but in the complainant's patent and in the defendants' dress form there is a double set of braces for adjusting a single part of the skirt form; namely, the upper end, and such double set of braces for effecting one adjustment cannot properly be compared with two separate sets of braces for effecting two different adjustments; and hence all that Mr. Earle says about the use of two sliding blocks with the double braces and adjustable rests, and the independent adjustment of the upper and lower braces of the Franke patent, is wholly immaterial to this case, because he is comparing unlike parts and parts of the complainant's patent and the defendants' dress form that are not found in either of the Franke patents.

Also, all that Mr. Earle says about the separate adjustment of the upper and lower parts of the form in the Franke patent, and the upper and lower part of the skirt form in complainant's patent, and in defendants' dress form, being independent of each other in the Franke and complainant's patents, and simultaneously effected in the defendants' dress form, I consider immaterial, because, as I understand Mr. Earle to state, and it is a fact whether I understand him aright or not, that the second claim refers principally to the skirt form and to the means for adjusting its upper end. It is, therefore, immaterial what combination there may be or may not be be-

tween the means for adjusting the upper end of the skirt form and the means for adjusting the lower end of the same, provided the upper end of the skirt form be combined with means for adjusting it in the manner specified in the claim. The connecting of mechanism for adjusting the upper and lower ends, whether advantageous or disadvantageous, does not alter the fact that in the defendants' dress form the upper end is adjusted by the means specified in the second claim, and in the same way.

Whether the upper and lower adjustments are independent or not has no bearing whatever on the equivalency of the sliding blocks and adjustable rests with a screw-threaded block and standard. The Franke patents, as before stated, do not have the double braces common to the complainant's skirt form and the defendants' dress form. In the latter form, the upper sliding block and its
33 rest is the same, with a slight addition, as the block f^2 and rest h^2 of the Hall patent, while the adjustment of the opposing sets of braces in the defendants' form is accomplished by substituting for the block f^1 and rest h^1 of the Hall patent the threaded blocks G and threaded portion of the standard H of the Franke patent, No. 167,394, which, as said patent shows, was a known equivalent for holding and using braces on a standard at the date of the Hall patent.

Int. 8. Mr. Earle, in answer to cross-int 36, says that he finds described in complainant's patent a set-screw in the upper rest, "but not illustrated, owing to the close position of the parts in Fig. 2; it would have been impracticable to have shown a set-screw, such as is shown in the other two rests." What, if anything, have you to say about this?

Ans. There is no such set-screw described in the patent for the rest h^2. The patent says of the rests h^1 and h^2, that they are similar to the rest h, but it nowhere says that they are provided with similar set-screws. The rest h^1 is shown with a set-screw h^3, but there is none shown for the rest h^2. I agree with Mr. Earle that, owing to the closeness of the parts, it would be impracticable to show such set-screws in the drawings, and for the same reason that it would be impracticable to use such a set-screw in the rest h^2. Nothing is said in the patent as to how the rest h^2 is secured to the standard, leaving said collar or rest to be secured to the standard in accordance with any known expedient, as, for instance, by pinning it to the standard, or by the use of a set-screw, which is sunk into the rest, so that its head does not project therefrom to interfere with the parts which are in close proximity to said rest. By the term "similar" I do not understand that the rests h^1 and h^2 are to be exactly like the rest h in every particular. In fact, the rest h^2 is shown in the drawing as somewhat similar in form to the other rests; and, consequently, there is no warrant in the patent for saying that it describes a set-screw for the rest h^2, or for saying that said rest is required by the patent to be adjustable up and down on the standard.

Int. 9. Please look at the Defendants' Exhibits Wilson, Everett, Ferris and Balch Patents, and examine the answer of Mr. Earle to Int. 10, and state whether you agree with him in the conclusions

which he has reached concerning the bearing of these patents
34 upon the mechanism and devices of complainant's patent and defendants' dress form.

Ans. As to the Wilson patent, I do not understand Mr. Earle to say that it has any bearing on the second claim of complainant's patent in suit, as the comparison which he has made between it and the skirt form of the complainant's patent and the defendants' dress form appears to relate to the means for expanding the lower part of the skirt form, which means are not referred to in the second claim of complainant's patent.

The specifications of the Wilson patent says: "My invention consists in so constructing a form for the manufacture of hoopskirts that it may be quickly and easily adjusted to enable any size or shape of skirt to be made upon it." Thus it will be seen that the device consists of a sort of a horse or frame to hold rigid hoops in place while they are being connected together to form a hoopskirt. This is a very different device from the complainant's dress form, which is intended to support and exhibit a dress skirt, consisting of a thin fabric, without any hoops.

Such a form must be so far complete as to support practically the entire skirt, while the frame to build the hoopskirt upon only requires that each hoop should be supported at three or four points.

The ribs or strips on which the hoops are placed in the Wilson device are hinged to the waist blocks at their upper ends, and for this reason, if for no other, is unlike the skirt form of complainant's patent and the defendants' skirt form. Furthermore, it does not contain the two opposing set of braces for adjusting the upper part of the skirt form, or for any other purpose. I consider it unnecessary to mention further differences.

The Everett patent is hardly near enough like complainant's patent to admit of any comparison. The form on which the skirt is hung is simply a waist block made in two parts, adjustable to and from each other, each part having a short, depending flange. It also contains a folding tripod for a stand; but this I consider has no bearing on the second claim of the complainant's patent, as it is evident, without explanation, that it does not contain the combination recited therein.

35 In the Ferris patent is shown a corset exhibitor. The upper and lower parts of the form consist of two horizontal and rigid boards, C and D, which have no diametrical adjustment of any kind whatever. Immediately below the upper board and above the under board a frame-work is shown, which the patent says is "constructed of umbrella-like ribs and braces." The description is very meagre, but the patent says the adjustment of these frames will tend to impart the requisite fulness, but it is evident that the upper and lower ends of the form are not adjustable diametrically. These ribs are entirely unlike the ribs of the skirt form in complainant's patent, from the fact that the ribs in each frame are umbrella-like ribs, and are hinged to a central collar. I do not agree with Mr. Earle that this device exhibits the same method of adjusting

as those described in complainant's patent, differing only in specific mechanism. I think it shows a radically different organization in every respect, and one in which the method of adjustment is radically different. I might refer to still other differences, but I consider it unnecessary.

The Balch patent is for an improved reel. It does not show a garment form of any kind, nor anything which is suggestive of a garment form. It is true that the opposing sets of braces, and the clips or heads to which their outer ends are pivoted, and the blocks by which the two sets of braces are mounted on the standard, are quite similar to the standard, the blocks mounted on the standard, the two opposing sets of braces hinged to said blocks at their inner ends, and the clips or heads to which the outer ends of the opposing sets of braces are pivoted in the complainant's patent, but it does not show any skirt form or garment form attached to the clips or head. In other words, it does not show the ribs *c* of the patent, nor the application of a series of such ribs to an adjusting mechanism for expanding or contracting the upper part of the skirt form. This device, as before stated, is intended for use as a reel, and is expanded or contracted only for the purpose of varying the length of the skein of yarn or thread wound thereon. For this purpose it is immaterial what form the arms impart to the skein which is wound thereon, and consequently, only four arms are used, so that the skein, when upon the reel, if viewed in plain view, gives a square figure. Four such arms, even if of the proper length for a skirt form, would not
36 be the skirt form of the patent, because they are not capable of giving the requisite roundness of form. The skirt form of the patent not only gives the proper form for a dress skirt by itroundness, as viewed in plain view, but it is also curved in a longitudinal direction to give it the proper form. This Balch patent does not contain the combination described in the complainant's patent and referred to in the second claim thereof, principally for the reason that it does not contain the series of ribs composing the skirt form of the patent, nor the combination of such ribs, with mechanism for extending and contracting the upper end of such form.

Cross-examination by JOHN K. BEACH, JR., Esq., of counsel for the defendants:

Cross-int. 10. In this Balch patent, which contains, as you have testified, opposing sets of braces quite similar to those shown in the complainant's patent in suit, do you find the sliding blocks f^1 and f^2, and rests h^1 and h^2 of the second claim?

Ans. As to the sliding blocks, yes. The rests are not shown at all in the drawings, but the specification says of the head B, that it is secured to the shaft "in such manner that it may turn freely thereon without rising up or falling down." Thus it will be seen that this block is free to slide in the rotary movement of the reel, as is specified for one of the sliding blocks in complainant's patent, and from the fact that it is secured from rising up or falling down, it must have the equivalent of the rest h^2 of the complainant's patent.

As to the lower sliding block or head, the specification says, "some convenient device may be used to retain the sliding head F at the desired point." This I understand to call for the employment of a rest similar to the rest h^1 of the complainant's patent, or some device which is equivalent to the function thereof, although in both cases the specific form of device is not mentioned in the Balch patent.

Cross-int. 11. You have stated, referring to this same Balch patent, that four arms attached to the opposing sets of braces, even if of the proper length for a skirt form, would not be the skirt form of the patent, because they are not capable of giving the requisite roundness of form. Am I right in inferring from this, that even if four ribs, such as are described in the patent as the ribs *c*, were
37 attached to what you have called the clips or heads, in which the opposing sets of braces in the Balch patent terminate, the combination thus formed would not, in your opinion, be the combination described in the second claim of the patent?

Ans. No. It would not be the combination of the patent in a complete and practical form, although the longitudinal curvature of the rib might be suggestive of a skirt form. It is certain, however, that only four ribs of the width shown and described in the complainant's patent would not constitute a skirt form, and I understand the second claim of the patent to refer to such a series of ribs as would properly support and give the requisite round form to a dress skirt.

Cross-int. 12. On the other hand, four such segments as are contained in the defendants' dress form would, if so attached to the Balch expanding mechanism, come within the description of the second claim, as you understand it, would they not?

Ans. Yes, because they are formed with special reference to giving the necessary round shape throughout, practically the whole circumference of a skirt form.

Cross-int. 13. Apart from the mechanism by which they are adjusted, and the limitations of adjustment which result from this mechanism, do you or not regard the ribs of the Wilson patent as essentially different from the ribs of the patent in suit.

Ans. I do, as a series; that is, as a whole.

Cross-int. 14. For what reason?

Ans. For the reason that they are not capable of imparting the necessary round form to a dress skirt, so that they would be of no practical use whatever for the purpose for which the skirt form of the complainant's patent was designed.

Cross-int. 15. Do you mean because there are not enough ribs in the series to give a substantially round shape to a skirt if it were hung thereon?

Ans. That is one reason; but they are not arranged in a circular form when viewed in a plan view, but would present, if a dress were placed thereon, a square figure in a plan view. It is not only the number of the ribs, but the arrangement of them in
38 a series, that is essential to produce the proper form. Other ribs might be added, and still it would preserve the square form.

Cross-int. 16. Are you now referring to that arrangement of ribs shown in the drawing of the Wilson patent?

Ans. Yes.

Cross-int. 17. Does not the specification of the Wilson patent state that the invention relates to the form for the manufacture of hoop-skirts, so that a skirt of any desired size or shape may be made thereon, and does it not further describe the ribs as being of any necessary number to accomplish this result?

Ans. Yes.

Cross-int 18. Now, in view of that language of the specification, I will ask you again whether the ribs of the Wilson patent, apart from the mechanism by which they are adjusted and regarded simply as a series of ribs, are or are not, in your judgment, essentially different from the ribs of the patent in suit?

Ans. They are essentially different as a series, notwithstanding the language of the patent referred to. Four ribs are all that is necessary in making a hoopskirt.

Cross-int 19. How many does the drawing show?

Ans. Four full-length ribs and one short rib.

(Adjourned.)

BOSTON, *July* 25, 1887.

Cross-int. 20. When you say that four ribs are all that are necessary in making a hoopskirt, do you mean that four ribs are all that are necessary to give a skirt-like outline to the hoops?

Ans. What I had in mind was that it was only necessary to support each hoop at four points when holding the hoop in position to build it into a skirt. In fact, it would be necessary to support each hoop only at three points. As far as the profile of the hoopskirt is concerned, two ribs would give the necessary contour inside view.

Cross-int. 21. These four long ribs that are shown in the Wilson patent are arranged in plan view at substantially equidistant points on the circumference of a curve which, when completed by the hoops which they support, has the shape of a skirt, are they not?

Ans. Not exactly. I think the hoops, and not the ribs, give the skirt-like form to the skirt. The ribs, when the hoops are
39 fitted to them at different points of their length, give the profile to the skirt inside view. The ribs are arranged in plan view, so as to come within the circle of the hoop which bound them, but the hoops, and not the ribs, give the round form to the skirt.

Cross-int. 22. The point I had in mind was, whether or not the ribs of the Wilson patent were arranged at substantially equidistant points on the circumference of a more or less perfect circle.

Ans. They are arranged at substantially equal distances apart, and therefore would be bounded by an imaginary circle; but if a flexible cord were drawn around them, it would describe a square figure and not a round one.

Cross-int. 23. Since the object of the ribs is to enable a hoop-skirt of substantially circular form to be built upon them, it would

follow, would it not, that if anybody should desire to add more ribs, these additional ribs would be arranged upon the circumference of a circle?

Ans. No, not necessarily.

Cross-int. 24. And if more ribs were added, a flexible cord drawn around them would describe a polygon, whose sides would be regular if the ribs were equidistant, would it not?

Ans. Yes, if the ribs were equidistant apart and form an imaginary centre.

Cross-int. 25. I have assumed that in my questions, because I supposed that to be the arrangement indicated in the patent; am I right about that?

Ans. I find no warrant for any such assumption. On the contrary, from the appearance of the short rib in the drawing, I think that if more than four ribs were supposed to be needed, they would be arranged in some other way than at equal distances apart.

Cross-int. 26. They would be arranged substantially as the circumference of a circle, would they not, if the arrangement indicated in the patent was followed?

Ans. All of the ribs shown in the drawing are substantially so arranged.

Cross-int. 27. And if a sufficient number of ribs like those shown in the Wilson patent were arranged on the circumference of a circle at such distances as to give proper shape to a skirt, would you or not regard such a series of ribs essentially different from those of the patent in suit?

Ans. If the individual ribs of the Wilson patent were arranged in the proper circular series and mounted so as to have the mode of operation described for the ribs of the patent in suit, I think they might be said to be essentially the same as the ribs of the skirt form in said patent, although they would differ from that series by being substantially straight ribs instead of ribs which are curved longitudinally, and for that reason it would not be the best form of the ribs shown in the Hall patent.

Cross-int. 28. Nevertheless, if anybody should take eight ribs like the lay ribs shown in the Wilson patent, and substitute them in the combination of the second claim for the rib *c*, such substituted combination would, in your opinion, be substantially the same combination as that specified in the second claim, if I have understood your last answer.

Ans. I have not said any such thing. I do not know that the skirt form of complainant's patent is limited to any particular number of ribs, but I am inclined to think that eight ribs of the width shown in the Wilson patent would hardly be sufficient for a proper skirt form. The essential thing is the ribs should be near enough together, and of such width, form and arrangement as to give the desired roundness of form to an ordinary dress skirt hung thereon. I think a rough embodiment of the second claim might be made by using a stick-like form of ribs such as are shown in the Wilson patent, but mounted and arranged as in the complainant's patent. I wish it to be distinctly understood that in my opinion the Wilson

Cross-int. 16. Are you now referring to that arrangement of ribs shown in the drawing of the Wilson patent?

Ans. Yes.

Cross-int. 17. Does not the specification of the Wilson patent state that the invention relates to the form for the manufacture of hoop-skirts, so that a skirt of any desired size or shape may be made thereon, and does it not further describe the ribs as being of any necessary number to accomplish this result?

Ans. Yes.

Cross-int 18. Now, in view of that language of the specification, I will ask you again whether the ribs of the Wilson patent, apart from the mechanism by which they are adjusted and regarded simply as a series of ribs, are or are not, in your judgment, essentially different from the ribs of the patent in suit?

Ans. They are essentially different as a series, notwithstanding the language of the patent referred to. Four ribs are all that is necessary in making a hoopskirt.

Cross-int 19. How many does the drawing show?

Ans. Four full-length ribs and one short rib.

(Adjourned.)

BOSTON, *July* 25, 1887.

Cross-int. 20. When you say that four ribs are all that are necessary in making a hoopskirt, do you mean that four ribs are all that are necessary to give a skirt-like outline to the hoops?

Ans. What I had in mind was that it was only necessary to support each hoop at four points when holding the hoop in position to build it into a skirt. In fact, it would be necessary to support each hoop only at three points. As far as the profile of the hoopskirt is concerned, two ribs would give the necessary contour inside view.

Cross-int. 21. These four long ribs that are shown in the Wilson patent are arranged in plan view at substantially equidistant points on the circumference of a curve which, when completed by the hoops which they support, has the shape of a skirt, are they not?

Ans. Not exactly. I think the hoops, and not the ribs, give the skirt-like form to the skirt. The ribs, when the hoops are
39 fitted to them at different points of their length, give the profile to the skirt inside view. The ribs are arranged in plan view, so as to come within the circle of the hoop which bound them, but the hoops, and not the ribs, give the round form to the skirt.

Cross-int. 22. The point I had in mind was, whether or not the ribs of the Wilson patent were arranged at substantially equidistant points on the circumference of a more or less perfect circle.

Ans. They are arranged at substantially equal distances apart, and therefore would be bounded by an imaginary circle; but if a flexible cord were drawn around them, it would describe a square figure and not a round one.

Cross-int. 23. Since the object of the ribs is to enable a hoop-skirt of substantially circular form to be built upon them, it would

follow, would it not, that if anybody should desire to add more ribs, these additional ribs would be arranged upon the circumference of a circle?

Ans. No, not necessarily.

Cross-int. 24. And if more ribs were added, a flexible cord drawn around them would describe a polygon, whose sides would be regular if the ribs were equidistant, would it not?

Ans. Yes, if the ribs were equidistant apart and form an imaginary centre.

Cross-int. 25. I have assumed that in my questions, because I supposed that to be the arrangement indicated in the patent; am I right about that?

Ans. I find no warrant for any such assumption. On the contrary, from the appearance of the short rib in the drawing, I think that if more than four ribs were supposed to be needed, they would be arranged in some other way than at equal distances apart.

Cross-int. 26. They would be arranged substantially as the circumference of a circle, would they not, if the arrangement indicated in the patent was followed?

Ans. All of the ribs shown in the drawing are substantially so arranged.

Cross-int. 27. And if a sufficient number of ribs like those shown in the Wilson patent were arranged on the circumference of a circle at such distances as to give proper shape to a skirt, would you or not regard such a series of ribs essentially different from those of the patent in suit?

Ans. If the individual ribs of the Wilson patent were arranged in the proper circular series and mounted so as to have the mode of operation described for the ribs of the patent in suit, I think they might be said to be essentially the same as the ribs of the skirt form in said patent, although they would differ from that series by being substantially straight ribs instead of ribs which are curved longitudinally, and for that reason it would not be the best form of the ribs shown in the Hall patent.

Cross-int. 28. Nevertheless, if anybody should take eight ribs like the lay ribs shown in the Wilson patent, and substitute them in the combination of the second claim for the rib *c*, such substituted combination would, in your opinion, be substantially the same combination as that specified in the second claim, if I have understood your last answer.

Ans. I have not said any such thing. I do not know that the skirt form of complainant's patent is limited to any particular number of ribs, but I am inclined to think that eight ribs of the width shown in the Wilson patent would hardly be sufficient for a proper skirt form. The essential thing is the ribs should be near enough together, and of such width, form and arrangement as to give the desired roundness of form to an ordinary dress skirt hung thereon. I think a rough embodiment of the second claim might be made by using a stick-like form of ribs such as are shown in the Wilson patent, but mounted and arranged as in the complainant's patent. I wish it to be distinctly understood that in my opinion the Wilson

patent neither shows, describes nor suggests a series of ribs which are adapted to support and give the proper form to an ordinary dress skirt.

(All that part of the answer after the words, "I think a rough embodiment of the second claim might be made by using a stick-like form of ribs such as are shown in the Wilson patent, but mounted and arranged as in complainant's patent," objected to as not responsive.)

Cross-int. 29. Does the method of and apparatus for expanding and contracting the lower ends of the ribs in the Wilson pat-
41 ent differ materially from the method and apparatus for contracting and expanding the lower ends of the ribs in the patent in suit?

Ans. It does not. The principal difference is that in the complainant's patent the braces at the lower end of the skirt form are so adjusted on the standard that they may be revolved thereon, while in the Wilson patent they cannot be revolved on the standard.

Cross-int. 30. You have stated in answer to Int. 9 as follows: "As to the Wilson patent, I do not understand Mr. Earle to say that it has any bearing on the second claim of complainant's patent in suit, as the comparison which he has made between it and the skirt form of the complainant's patent and the defendants' dress form appears to relate to the means for expanding the lower part of the skirt form, which means are not referred to in the second claim of complainant's patent."

It is true, is it not, that the patent in suit describes the rests and sliding blocks and braces which are attached to the upper ends of the ribs as operating "in manner exactly similar to those connected with the lower portion of the skirt form"?

Ans. Yes.

Cross-int. 31. The combination of the second claim relates to an adjusting mechanism for the upper or hip portion of the dress form, does it not?

Ans. Yes.

Cross-int. 32. And the mechanism specified in the claim is so related to the other parts of the dress form shown in the patent as to act independently of the mechanism for adjusting the lower part of the skirt form, does it not?

Ans. It is shown and described as capable of acting independently of the mechanism for adjusting the lower part of the skirt form, but it is not described as necessarily so acting. It would make no difference with its operation if the mechanism at the lower part of the skirt form should be operated simultaneously.

Cross-int. 33. The particular mechanism described in the patent is intended and adapted to give an independent adjustment of the hip portion of the skirt form, is it not?

Ans. Yes; that is to say, it is disconnected from the mech-
42 anism at the lower part of the skirt form, except through the ribs and standard.

Cross-int. 34. This particular mechanism described in the patent

is intended and adapted not merely to adjust the circumference of the hip portion of the skirt form, but also to alter the relative dimensions of the form at the hip, so as to vary what you have called the profile or outline of the skirt, is it not?

Ans. I have before stated that the patent shows and describes one mechanism for adjusting the upper portion of the skirt form and another mechanism for adjusting the lower portion of the skirt form, which mechanisms are not necessarily connected. Incidentally, the result of changing the contour, that is, enlarging the upper or lower portion more than the other might be effected, but the patent makes no reference to any such operation or change of proportion, except by enlarging the lower part of the skirt form throughout a part of its circumference, by the mechanism referred to in the first clause of claim.

Further than this, the changing of the proportions of the skirt form in profile seems to be incidental to the construction described, rather than specially adopting the mechanism for such purpose.

Cross-int. 35. You say that these mechanisms for adjusting the upper and lower parts of the skirt form "are not necessarily connected;" are they connected at all in operation?

Ans. Not necessarily. There is no mechanism for connecting them in operation, but if they are operated simultaneously, as, for instance, by two operators, it would make no difference in the result or mode of operation.

Cross-int. 36. Is there any suggestion in the patent that they are to be operated simultaneously?

Ans. No.

Cross-int. 37. The operation of either the upper or the lower mechanism by itself necessarily results in an alteration of the contour of the dress form which the manipulator may or may not preserve when he comes to operate the other adjustment, does it not?

Ans. Yes.

43 Direct examination resumed:

Int. 38. Does the operation of the double braces, as contemplated by the patent, expand and contract the entire dress form?

Ans. Yes, to a certain extent, although they are principally designed to contract and expand the upper end of the skirt form, provided a lower set of braces is used in connection therewith, whose principal office is to expand and contract the lower end. If such lower set is not employed, then the same double set of braces as the upper ends of the skirt form may be made to serve as the sole means for expanding and contracting the entire skirt form.

Int. 39. Would a single set of braces be sufficient to adjust the size of the dress form and maintain it in a given position?

Ans. No; it requires a double set.

Int. 40. Do I understand that you regard it essential to the adjustment of the dress form that it should have, in addition to the double braces, a single set?

Ans. No. I mean the only essential is two sets of opposing

braces, like the double set of braces at the upper end of the skirt form in complainant's patent.

(Counsel for the defendants waives formal proof of the genuineness of the signature of John Hall to the assignment marked "Complainant's Exhibit B.")

Cross-examination resumed:

Cross-int. 41. Do you mean that in a dress form constructed in all respects like that shown in the patent in suit the lower set of braces is unnecessary, in your judgment?

Ans. Yes.

Cross-int. 42. The specification says: "In the skirt form, *c c* are upright ribs, made preferably of thin, springy material, held toward the standard *a* by means of elastic fabric *d d*, one band being placed near the bottom of the skirt and one near the hip portion. These elastic bands are secured to each rib." Do you think the upper set of braces would sufficiently expand the lower portion of the ribs thus described?

Ans. Yes, so far as the form of mechanism shown in the
44 patent is concerned. I am aware, however, that the elasticity of the ribs and the elastic band at the lower part of the skirt form might be such that the double set of braces at the upper end would be insufficient to properly expand the entire skirt form. Of course, the ribs should be springy enough or stiff enough, as it is called, to resist the pressure of the elastic band at the lower end.

JAMES SHEPARD.

Attest: THOS. H. WAKEFIELD,
Special Examiner.

COMPLAINANT'S EXHIBIT B. T. H. W., Examiner.

Know all men by these presents:

That I, John Hall, of Watertown, in the Commonwealth of Massachusetts, in consideration of the sum of one dollar and other valuable considerations, to me in hand paid by Charles A. Morss, of Boston, in said Commonwealth, the receipt of which is hereby acknowledged, do hereby sell, assign and transfer unto said Charles A. Morss, all the right, title and interest which I have in and to the following-described letters patent:—

Letters patent to John Hall, numbered 233,239, dated Oct. 12, 1880, for improvement in dress forms; letters patent to John Hall, numbered 233,240, dated Oct. 12, 1880, for improvement in adjustable dress forms; letters patent to John Hall, numbered 236,887, dated Jan. 25, 1881, for improvement in dress forms; letters patent numbered 243,703, to John Hall, dated July 5, 1881, for improvement in adjustable dress forms; and letters patent to John Hall, numbered 269,851, dated Jan. 2, 1883, for improvement in adjustable dress forms.

To have and to hold to the said Charles A. Morss and his heirs

and assigns forever said letters patent and each of them, and all the rights and privileges accruing thereunder, the same to be held and enjoyed by the said Charles A. Morss for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted (thus including extension), as fully and entirely as the same would have been held and enjoyed by me had this sale and assignment not been made.

In testimony whereof, I have hereunto set my hand and affixed my seal, this twenty-seventh day of April, A. D. 1886.

JOHN HALL. [SEAL.]

Witness:
CHAS. F. PERKINS.

Received for record May 1, 1886, and recorded in Liber R[34], page 119 of Transfers of Patents.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

[SEAL.] M. V. MONTGOMERY,
Commissioner of Patents.

Ex'd. F. C. T.

47 UNITED STATES PATENT OFFICE.

JOHN HALL, of Watertown, Massachusetts.

Adjustable Dress-form.

Specification forming part of Letters Patent No. 233,240, dated October 12, 1880. Application filed January 24, 1880.

To all whom it may concern:

Be it known that I, John Hall, of Watertown, in the county of Middlesex and State of Massachusetts, have invented a new and useful dress-form, of which the following is a specification.

My invention relates to improvements in dress-forms, by means of which every part of the device is rendered adjustable, so that it may be applied to a dress of any size or style and fill it out perfectly, in order that trimming may be placed upon it, &c. The mechanism for accomplishing this result is illustrated in the accompanying drawings, in which—

(Here follows diagram marked p. 46.)

Figure 1 is a side elevation of a dress-form embodying my invention. Fig. 2 is a vertical section of the same. Fig. 3 is a horizontal section on line *x y*, Fig. 2. Fig. 4 is an enlarged sectional view of a portion of the dress-form detached.

Similar letters of reference refer to similar parts throughout the several views.

a is a pole or standard, supported in a pedestal, *b*, of ordinary construction. This pole or standard is designed to support an entire dress-form, which is made, however, in two distinct parts, which I will designate as the "skirt-form" and "waist-form." The principle of the invention is the same in both.

In the skirt-form, *c c* are upright ribs, made preferably of thin springy material, held toward the standard *a* by means of elastic fabric *d d*, one band being placed near the bottom of the skirt and one near the hip portion. These elastic bands are secured to each rib.

Instead of fabric, spiral-spring wire may be used, although fabric is deemed more efficient and economical.

e e are braces or stretchers, whose inner ends are hinged to the sliding block *f* and whose outer ends are hinged to the ribs *c c*. *e' e' e'* are braces, whose inner ends are hinged to the block *f* and whose outer ends are hinged to slides *g g g*, placed upon the two side ribs and one rear or trail rib, *c c c*. Each brace *e'* is provided with a hook, *k*, adapted to drop into one of several holes, *k'*, Fig. 4, made at intervals in its corresponding rib. The block *f* slides upon the rest or support *h*, provided with a set-screw, h^3.

To spread the lower part of the skirt-form, loosen the set-screw h^3, raise the rest *h*, which pushes up the sliding block *f* and lifts the

J. HALL.

Adjustable Dress Form.

No. 233,240 Patented Oct. 12, 1880.

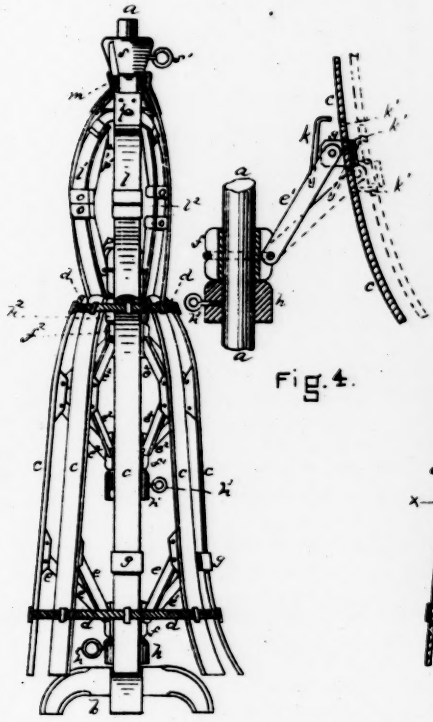

Fig. 4.

Fig. 1.

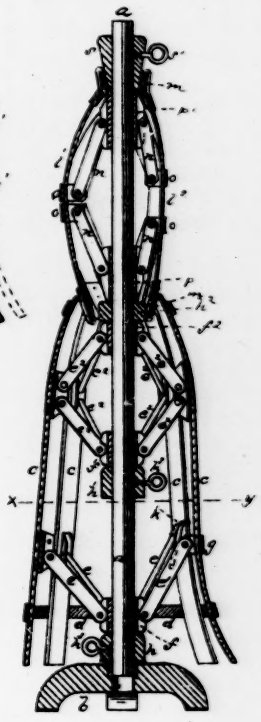

Fig. 2

No. 286.
Knappetal.
N. Mass.
p. 46.

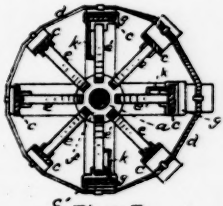

Fig. 3.

WITNESSES

James W. Reed Jr.

George V. Mallon

INVENTOR

John Hall

By his Atty

Henry W. Williams

inner ends of the braces *e e*, thus spreading the skirt-ribs *c c*, and adjust the set-screw h^3.

To adjust a particular rib independently of the others, move the slide *g* (see Fig. 4) up or down to force the rib in or out, and drop the hook *k* into the desired hole.

The present style of skirt requires the side ribs to be placed in and the rear or trail rib out a little. To contract the skirt-form, loosen the set-screw h^3, and the band *d* will force the ribs in and the block *f* and rest *h* down.

At the hip portion of the skirt-form two sets of braces, e^2 e^2, hinged to sliding blocks f^1 f^2 below and above and to the ribs *c c*, are provided. Rests h^1 h^2, similar to rest *h*, are placed above and below the sliding blocks, and the rests, blocks, and braces operate in manner exactly similar to those connected with the lower portion of the skirt-form. Thus the hip portion may be enlarged or contracted as desired.

In the waist-form elastic bands *m* are placed at the neck and lower extremity around the ribs, which, however, depend quite largely upon their own elasticity for contraction. The side ribs, *l l*, are jointed at the shoulders, and are supplied with a pair of long braces or stretchers, *n n*, so as to admit of great expansion. The breast-ribs *l' l'* have nearly as long ones, and the other ribs, l^2, have shorter ones. The braces *n n* are all connected with slides *o o* and with sliding blocks *p p'*. A neck-block, *s*, having set-screw *s'*, lies above the sliding block *p'*.

To place and adjust the waist-form after the skirt-form has been adjusted, push the waist-form down until the sliding block *p* rests upon the rest h^2; then with the neck-block *s* press the sliding block *p'* until the waist-ribs have sufficiently spread. The side and breast ribs *l l'*, having the longest braces *n*, will expand the most, and the others in proportion. Then set the screw *s'*.

I usually attach the upper ends of the breast-ribs and the corresponding rear ribs to the upper part of the side or shoulder ribs, such part being lettered l^3 in Fig. 1, and forming the shoul-
48 der. Thus it will be seen that provision is made for different sizes, proportions, and heights, as well as for changing fashions in dress.

The waist and skirt may be used separately, if desired, the former being capable of displaying vests, &c.

Having thus fully described my invention, what I claim, and desire to secure by letters patent, is—

1. In combination with the sliding block *f* upon the standard *a* and brace *e'*, the slide *g*, hook *k*, and rib *c*, having openings *k'* therein, for the purpose of causing such rib to be adjusted independently of the rest of the series, substantially as specified.

2. In combination with the standard *a* and ribs *c*, the double braces e^2, sliding blocks f^1 f^2, and rests h^1 h^2, substantially as and for the purpose set forth.

3. In combination with the standard *a*, sliding blocks *p p'*, and neck-block *s*, the ribs *l l'* l^2, and double braces *n*, of various lengths,

attached to said ribs by the slides *o*, substantially as and for the purposes above described.

4. In combination with the standard *a* and braces *n*, the jointed side or shoulder ribs *l l*, substantially as and for the purpose specified.

JOHN HALL.

Witnesses:
HENRY W. WILLIAMS.
GEORGE V. MALLON.

49 Circuit Court of the United States, District of Connecticut.
In Equity.

CHARLES A. MORSS
vs.
SAMUEL N. UFFORD AND SON.

Evidence for Defendants.

Testimony taken under and pursuant to the 69th rule of the Supreme Court of the United States, in equity, as amended, before Francis G. Beach, Esq., notary public and special examiner by consent, pursuant to notice and by consent of parties.

NEW HAVEN, CONN., *June* 20, 1887—10.30 o'clock a. m.

Met pursuant to notice.

Present: Chas. F. Perkins, Esq., counsel for complainant, and John K. Beach, Esq., of counsel for defendants.

50 JOHN E. EARLE, a witness produced by and on behalf of the defendants, having been duly cautioned and sworn, testified as follows:

Int. 1. What is your name, age, residence, and occupation?

Ans. John E. Earle. I am fifty-six years of age. I reside in New Haven, Conn., and am a solicitor of patents.

Int. 2. What, if any, experience have you had to qualify you to testify as an expert in patent causes?

Ans. I have been engaged in soliciting patents for the past thirty-five years, and during the last eighteen years have testified as an expert in a large number of patent cases in the United States courts.

Int. 3. Please look at letters patent, No. 233,240, to John Hall, dated Oct. 12th, 1880, and say whether you have examined and understand the same.

Ans. I have, and believe I do.

Int. 4. Please look at Exhibit "Defendants' Dress Form," and say whether you have examined and understand the operation of the machine.

Ans. I have, and I do.

Int. 5. Please compare the Exhibit, Defendants' Dress Form, with the dress form described and shown in the letters patent in suit,

with especial reference to the 2d claim thereof, and state what likenesses and differences you find, if any.

51 Ans. Referring first to the patent in suit, I find the alleged invention described to relate to an improvement in that class of articles designed for the support or exhibition of ladies' dresses.

These forms consist of a central rod firmly supported upon a base, and having several vertical ribs arranged around the standard, the said ribs so supported by the standard as to permit them to be moved inward toward the standard to contract the diameter of the form, or extent of ribs; or to be moved outward from the standard to expand the diameter of the form.

In the patent the ribs which form the support or shape for the skirt are made adjustable either at the upper or lower end, so that the ribs may be contracted in diameter at the upper end and expanded at the lower end, or *vice versa*, or may be expanded at both the upper and lower ends at will; the adjustment for the upper part being entirely independent of the adjustment for the lower part.

The ribs are supported about the standard at the lower end by means of a collar on the standard, adapted to slide up and down thereon, to which collar braces are hinged by one end corresponding to the respective ribs of the form. These braces extend radially outward, but in an oblique direction, their outer ends hinged to the respective ribs, and so that by sliding the collar, up or down, the obliquity of the ribs is diminished or increased, and the ribs thereby expanded or contracted. That is to say, the braces being inclined upward from the collar to the ribs, if the collar be raised it

52 raises the inner ends of the ribs, causing the ribs to approach a horizontal plane, thereby throwing their outer ends and the ribs hinged thereto outward, so as to expand the ribs at the lower portion of the form; or if the collar be moved downward, then the inclination of the ribs is increased and their upper ends correspondingly drawn inward to contract the form in its lower portion.

Around the standard, and below the collar or block which carries the braces, is a second collar adjustable on the standard, which forms a rest upon which the collar supporting the braces bears, and so that as this adjustable collar is moved up or down on the standard and set at different points by means of a set-screw prepared for the purpose, the lower portion of the form is expanded or contracted accordingly as the adjustable collar is so moved.

The upper part of the skirt form is adjusted by mechanism substantially like that by which the lower portion is adjusted. A like sliding collar is arranged upon the standard, and to it braces are hinged by one end, the braces inclined upward and outward, their outer ends hinged to the ribs in like manner as the braces from the sliding collar below; and like the sliding collar at the lower part of the form, there is an adjustable collar on the standard below it which may be raised or lowered on the standard, and set at any desired position by means of a set-screw provided for the purpose, and so as to form a rest for the brace-carrying collar.

53 By means of this adjustable collar or rest, the upper por-

tion of the ribs may be expanded or contracted in like manner as may be the lower portion of the form.

Combined with this second adjustable collar and series of braces in the upper portion of the skirt form, is a second series of braces and a second sliding collar. The second sliding collar is arranged on the standard above the collar which supports the braces below, and from this upper sliding collar braces extend downward and inclined outward, which are hinged to the respective ribs of the form. These two series of ribs and two collars being thus connected through the ribs, it follows that inasmuch as both collars slide upon the standard, that these collars will approach each other as the ribs are expanded, or recede from each other as the form is contracted.

Above the upper sliding brace collar an adjustable collar is arranged for the upper brace collar.

By means of the combination of the two sliding collars with the two oppositely inclined series of braces connecting the ribs with the respective collars, and so stated in the patent at fol. 70—"the hip portion may be enlarged or contracted as desired."

The alleged invention recited in the second claim of the patent, as I understand it, relates only to the independent adjustment of the hip portion. It recites specifically as elements: First, the standard *a;* second, the ribs *c;* third, the double braces c^2—that is, the two series of oppositely inclined braces; fourth, sliding
54 blocks f^1 and f^2, which I have called "brace collars," and to which the respective series of braces are connected; and fifth, rests h^1 and h^2, which I have called the adjustable collars h^1, being below the collar or block which carries the lower end of the lower series of braces, the other h^2, being the collar above the block which carries the upper end of the second series of braces; this claim, including therefore only the elements which enter into the hip portion of the form, and those elements being entirely independent of the means for adjusting the lower portion of the form, and so that that lower portion of the form may remain stationary while the upper portion is adjusted, or *vice versa.* I say I understand the alleged invention to be for the combination of these elements only when entirely independent of the adjustment of other parts of the form.

Referring now to defendants' dress form, I find a form having a tubular standard supported in a base. Loose within that tubular standard is a vertical rotatable shaft, the shaft extending above the upper end of the tubular standard. Surrounding this shaft are several ribs, corresponding in general outline to the skirt of a ladies' dress.

The shaft is screw-threaded at one portion with a left-hand thread, and at a portion above the left-hand screw-threaded portion is provided with a right-hand screw-thread. On each of those two screw-threaded portions is a corresponding nut, and so that the shaft being rotated in one direction will cause the nuts to approach each
55 other, or rotated in the opposite direction, the nuts will separate.

These nuts stand within the ribs. To the lower nut braces are hung to extend therefrom inclined downward, their outer ends

hinged to the ribs. To the upper nut braces are hinged, extending outward and inclined upward, hinged at their outer ends to the ribs. Above the upper nut a collar is placed upon the shaft in a fixed vertical position, but so as to permit the shaft to revolve therein. To this collar braces are hung which extend outward and incline downward, and which are also attached to the respective ribs by their outer ends.

Under this arrangement the upper collar being firmly held so that it can neither move up or down, it follows that if the shaft be rotated in one direction the two nuts will be separated, the one below moving downward and the one above upward. The braces which are attached to the fixed collar form a resistance opposed to the two nuts through their respective braces, and so that the upward movement of the upper nut forces the upper portion of the ribs outward and at the same time the downward movement of the lower nut forces the lower portion of the ribs outward, and so that the form is expanded alike throughout its whole extent, the adjustments above and below being so positively connected that there is no possible adjustment of one portion that is not necessarily communicated throughout the form.

56 Comparing defendants' form with the form described in the complainant's patent and alleged invention recited in the second claim thereof, I find that in defendants' form there are a series of ribs surrounding a standard. That in the upper portion, there are two series of oppositely inclined braces hinged to the ribs in similar manner to what are called the double braces in complainant's patent; but I do not find in defendants' form either the sliding blocks f^1, f^2, or the rests h^1, h^2, elements of the combination recited in the said second claim, but on the contrary, in defendants' form the collar to which the upper end of the upper series of braces is hinged, instead of being the sliding block f^2 as required by the said second claim, is a collar fixed to the standard or shaft without any capacity for being moved either up or down.

In defendants' form I find the collar, or block, which carries the lower end of one series of the double braces, instead of being a sliding block, is a nut through which a revolving screw-threaded central shaft extends and so that by said screw-thread the block is raised or lowered, and has no capacity for being so moved up or down except by the rotation of the shaft. There is no rest or support for this nut other than the screw-thread, and while this collar, so far as it serves to carry the lower end of the braces, corresponds to the sliding block f^1 of the patent it has not the sliding capacity of the block, and hence is not the sliding block f^1 of the second claim.

57 In defendants' form there is no adjustable rest corresponding to the adjustable rest h^1 of the patent which in the patent is necessary to the support and adjustment of the sliding block to which the lower ends of the braces are hinged and by which that sliding block is made adjustable; and which rest is necessary and essential to the adjustment of the form in complainant's patent.

As I have before stated, the combination of elements recited in

the second claim of complainant's patent is entirely independent of the device by which the lower portion of the form is made adjustable, and so that by means of that combination the hip portion of the form only may be expanded or contracted; and this combination also permits the expansion or contraction of the lower portion of the form without expansion or contraction of the upper portion; whereas in defendants' form the adjusting devices for both the upper and lower portions are so combined and connected that it is impossible to expand or contract the form at one point without causing a like expansion or contraction of the entire frame. Because then of the absence in the defendants' form of the elements essential to the combination recited in the second claim or any equivalent therefor, and because of the function due to the combination recited in the second claim of the patent being entirely absent from the defendants' form, I do not find in defendants' form the invention described in complainant's patent, and particularly recited in the second claim thereof.

58 (Defendants' counsel offers in evidence a certified copy of file-wrapper and contents of the complainant's patent in suit, and the same is marked Defendants' Exhibit Complainant's File-wrapper.)

(Also, Patent Office copy of letters patent to C. Franke, No. 167,393, dated Sept. 7, 1875; Patent Office copy of letters patent to C. Franke, No. 167,394, dated Sept. 7, 1875; Patent Office copy of letters patent, No. 102,638, to C. C. Wilson, dated May 3, 1870; Patent Office copy of letters patent, No. 202,713, to G. W. Everett, dated April 23, 1878. Patent Office copy of letters patent, No. 207,351, to S. B. Ferris, dated Aug. 27, 1878; and Patent Office copy of letters patent, No. 68831, to F. A. Balch, dated Sept. 17, 1867, and the same are marked respectively, Defendants' Exhibits Franke Patent, No. 1; Franke Patent, No. 2; Wilson Patent, Everett Patent, Ferris Patent and Balch Patent.)

59 (Defendants' counsel also offers in evidence Patent Office copy of letters patent, No. 307,960, to W. H. Knapp, Nov. 11, 1884, and the same is marked Defendants' Exhibit Knapp Patent.)

(It is stipulated by counsel for the respective parties that Complainant's Exhibit Defendants' Dress Form was manufactured by the Union Form Co., and by them sold to the defendant-, and that William H. Knapp and Chas. L. Knapp, who are owners of the last-named patent, are partners in the said Union Form Co.)

Int. 6. Will you please examine the Defendants' Exhibit Complainant's File-wrapper, and state whether you find anything contained therein which bears upon the question, whether the defendants' dress form contains the combination of elements recited in the second claim of the patent in suit, and if yea, state what it is.

(Objected to as involving a question of law.)

(Recess till 1.30 o'clock p. m.)

60 1.30 o'clock P. M.

Examination resumed:

Ans. I have examined the file-wrapper, and I find that in the original application for the patent in suit the following claim was made: "1st, A dress form consisting essentially of a central standard, one or more series of adjustable ribs, and corresponding series of braces or stretchers hinged to one or more runners or sliding blocks upon said standard, and having their outer ends connected with said ribs, whereby the dress form may be expanded and contracted, substantially as and for the purpose set forth."

Unqualified as this claim is by any peculiarity of construction, I have no doubt that under a reasonable construction of such a claim, defendants' form would be included. But this claim was rejected upon references, and upon such rejection the claim was erased.

In the same application a second claim was made, as follows: "2d, In combination with the standard *a*, rest *h*, sliding block *f'* and braces *e*, the ribs *c* and elastic band *d* substantially as and for the purpose described."

This claim includes the sliding adjustable collar at the lower part of the standard, the sliding block which rests upon it, whereby the lower part of the form was made adjustable independent of the upper portion.

61 This claim was also rejected on references, and was accordingly cancelled.

The fourth claim in the original application becoming thereby the present second claim.

The combination of the said second claim (the original fourth) being limited to the specific construction of devices, whereby the upper portion of the form was made adjustable independent of the lower portion, as the combination of the original second claim was for the combination of the peculiar devices whereby the lower portion of the form was made adjustable independent of the upper.

From the fact, therefore, that the inventor originally made a broad or generic claim for the combination of elements unqualified whereby the dress form was made adjustable, and at the same time made specific claims for the particular construction of devices whereby the upper and *and* lower portions of the form were made independently adjustable, I can come to no other conclusion than that the inventor, by cancelling the generic claim, limited himself thereby to the specific construction recited in the remaining claims, particularly in the original fourth, present second claim, and which combination of specific devices for the reasons before given, I do not find to exist in the defendants' form, and am confirmed in this opinion by the record in the application referred to in the question.

Int. 7. Mr. Shepard, in his deposition taken in behalf of

62 the complainants in this cause, stated that such a nut and threaded standard as is shown in Complainant's Exhibit Defendant's Dress Form, for adjusting the inner end of hinged braces, was a known equivalent at the date of the Hall patent in suit, for a

sliding block and fastening collar or rest. Assuming this to be true, will you please look at Defendants' Exhibit Franke Patents No. 1 and No. 2, and compare the adjusting mechanisms there shown with that described in the second claim of the patent in suit.

Ans. If this be true, then I should find in the said two Franke patents the invention recited in the second claim of the patent in suit.

In both the Franke patents there are illustrated and described forms for garments; one in the shape of pantaloons, the other in the shape of a coat. In both cases the form is made in sectional parts around a central shaft or standard. In both cases the upper and lower portions are made adjustable independent of each other, and they are made so adjustable by means of collars on the shaft or standard having braces extending therefrom hinged to the sections of the form to be adjusted, and so that by the movement of the collars up or down, they contract or expand the form according to the direction in which the collars are moved, and these collars are moved by means of a screw-threaded shaft in similar manner that the nuts are moved in defendants' form but the screws which operate the upper and lower adjusting collar are independent
63 of each other, so that either the upper or lower portions of the forms may be expanded or contracted, the one independent of the other. To that extent they possess the same function as the form in complainant's patent, but differ from defendants' form in that the adjustment of the defendants' form at the upper and lower portion is dependent one upon the other, and one portion cannot be adjusted without necessarily adjusting the other portion.

The construction of the Franke patent differs from the construction of the complainant's patent in that in complainant's patent the upper braces are double, require two collars for their support, and two adjustable rests; that is, requires the two sliding blocks, f^1, f^2, and the adjustable nuts, b^1, b^2, by which said blocks are held after having been moved to any desired position.

The adjustment of the braces in the Franke patents is substantially the same as that in defendants' form, but differs from that in complainant's patent, and one is not a full or substantial equivalent for the other, for this reason: By the use of the two sliding blocks, f^1, f^2, with the double braces, e^2, and the adjustable rests, b^1, b^2, the independent adjustment of the upper portion is made without in any way affecting the adjustment below.

To illustrate. We will suppose the sliding block, f^2, which support the upper end of the upper series of braces were rigid on the standard and not adjustable, and that the lower portion of the form has been adjusted to the desired extent, and it is now required to expand the upper portion of the form; to do this, the sliding
64 block f^1 must be raised; this will cause the upper series of braces to approach the horizontal plane and the points of their connection with the ribs to rise; and as the braces so rise the ribs must also rise; in doing this the upper portion of the form is expanded but as the ribs have necessarily moved to a higher position, the lower series of braces e connected thereto by their outer

ends must rise accordingly and this rising of the ribs and their connected braces, causes the braces to swing inward, upon their first connection with the sliding block *f* and thereby contract the form at its lower portion so that as the upper portion of the frame was expanded the lower portion would be contracted, or if the upper portion of the form be contracted by permitting the block f^1 to slide downward, the lower portion of the form would be expanded; whereas by making both the sliding blocks f^1 and f^2 adjustable so as to approach each other in expanding the form, or move from each other in contracting the form, this lifting action upon the ribs is avoided, and the ribs will retain the same elevation irrespective of their adjustment.

Because, therefore, the adjusting devices of the Franke patents and the adjusting devices of the defendants' dress form cannot have this independence of adjustment, I am of opinion that the nut and threaded standards of the Franke patents and of defendants' form are not equivalent for the sliding blocks and adjustable rests of the complainant's patent. They accomplish different results and in a different way.

65 Int. 8. If you are correct in describing the operation of the devices last referred to, then inasmuch as in the defendants' form the upper collar is incapable of any vertical adjustment, it ought to be impossible to expand or contract the defendants' form without raising or lowering the whole series of ribs. Is that true in fact?

Ans. It is. Any adjustment of the defendants' form to expand it must necessarily raise the ribs, and in contraction they as neces-arily descend.

Int. 9. Mr. Shepard, in his answer to the 14th X Int., testified that he found specifically the rest h^2 of the second claim of the patent in suit in the defendants's dress form, to wit: In the collar pinned to the shaft at the point where the upper series of double braces is hinged. Do you agree with Mr. Shepard in this opinion?

Ans. I do not. In describing the rest h^2 the specification says: "Rests h^1, h^2 similar to rest h" (that is the adjustable rest below the sliding block at the lower part of the form), "are placed above and below the sliding blocks" (meaning f^1 f^2) "and the rests, blocks and braces operate in manner exactly similar to those connected with the lower portion of the skirt form." So that as shown and described in the patent both the rests h^1 and h^2 are made adjustable in "exactly similar" manner to the adjustable rest in the lower portion of the form; but in defendants' form the collar, which Mr. Shepard calls the upper rest, is made in two parts, one above and the other below the collar to which the braces are hung, and both parts are

66 rigidly and immovable fixed to the shaft, so that by no possibility can the "sliding blocks or rests," as Mr. Shepard calls them, be moved up or down, nor are they adjustable in any manner. The collar, which Mr. Shepard calls the rest in defendants' form, is not only not the rest h^2 in the patent, but is not an equivalent therefor.

Int. 10. Please look at the Defendants' Exhibits Wilson Patent,

Everett Patent, Ferris Patent and Balch Patent, and state briefly what you find described in those patents which is in your opinion material to the matter in controversy?

Ans. In the Wilson patent I find a dress form consisting of a neck or waist band with several vertical ribs hinged thereto, and supported around a central standard. On the standard is a sliding adjustable collar having braces hinged thereto, the braces extending downward and outward and hinged by their outer ends to their respective ribs, so that as the collar is forced downward the braces approach a horizontal plane, they throw out the ribs and expand the form and *vice versa*. This arrangement of collar and braces hinged to the ribs is substantially the same as the lower series of braces and collar in complainant's patent, except that in complainant's patent the braces incline upward instead of downward as in the Wilson patent, and with this further difference that,

67 in the Wilson patent, the collar is held in place by a set-screw through it bearing directly upon the standard, instead of by an independent adjustable collar, as in the complainant's patent.

The device of the Wilson patent is substantially the same as the lower adjusting device of the plaintiff's form, except as to the method of adjusting the collar on the shaft or standard.

In the Exhibit Everett Patent I find a skirt-supporter having three legs hinged to the standard, and adapted to be spread to a greater or less extent by means of a collar adjustable on the standard with inclined braces connecting the collar with the legs, it being substantially the same method for expanding and contracting as that found in complainant's patent and in defendants' dress form.

In the Ferris patent I find a form adapted for corsets or waists, which is made in two sections, an upper and a lower section, each section composed of ribs and the ribs of each section adapted to be expanded by sliding collars on a standard through hinged braces connecting the ribs with the collars. It being the same method as that described in the complainant's patent, differing only in the specific mechanism.

In the Balch patent I find a reel, which consists of a central vertical standard provided with ribs surrounding it, the ribs connected to the standard by a series of braces hinged to the standard and extending downward and outward in an oblique direction, their outer ends hinged to the ribs, with a similar series of reversely inclined

68 braces, hinged by their outer ends to the ribs and by their inner ends to a sliding collar on the standard, so that by raising the sliding collar the ribs are forced outward, and *vice versa*.

These two series of braces, their connections with the respective ribs, and with the collar on the standard below, are substantially the same as the upper adjusting device in defendants' form, differing only in the means for raising and lowering the collar, and differing from the upper adjusting devices of complainant's patent only in the fact that in the Balch patent only the lower braces are adjustable connected with the standard, while in complainant's

patent both series of braces are adjustably connected with the standard.

Fig. 1 of the Balch patent, by the two positions illustrated therein, clearly illustrates what I have said as to the rise and fall of the ribs in defendants' form while expanding and contracting.

Int. 11. Please look at Defendants' Exhibit Knapp Patent, and say whether or not the Complainant's Exhibit Defendants' Dress Form is made in substantial accordance with the specification thereof.

Ans. It is.

Cross-examination by CHAS. F. PERKINS, Esq., counsel for complainants:

X Int. 12. What do you find in the device shown in com-
69 plainant's patent, particularly in the skirt portion thereof which was new at the time the patent was issued?

Ans. I have never examined the structure with a view to ascertaining whether or not there was anything new therein, and am therefore not prepared to say whether or not it possesses any novelty.

X Int. 13. Do you find any part or arrangement of parts, which is not shown in the patents which have been offered in evidence by the respondents, excepting therefrom the Knapp patent?

Ans. I have only examined this patent with a view to ascertaining whether or not defendants' form was an infringement upon the claims of the patent, and have made no comparison of that patent other than this, and am not prepared to say whether or not it contains anything not shown in the several patents in evidence in this suit.

X Int. 14. In the examination you have made with reference to the question of infringement, you have sought to analyze the nature of the invention and compare its component parts with parts shown in prior patents, for the purpose of expressing your opinion on the scope of the patents, have you not?

Ans. I have considered the question of infringement of all the claims of this patent, but not with the view of ascertaining whether or not either of the claims of the patent involved invention, and I have only testified as to my opinion whether or not defend-
70 ants' form was an infringement upon the second claim of the patent. In doing so I have, I think, clearly pointed out the differences, and given my reasons therefor, but have not felt called upon to say whether or not, in my opinion, the very specific and limited combination recited in the second claim involved novelty of invention.

X Int. 15. Why did you express the opinion that the complainant is limited to the specific construction of the individual elements of the second claim of his patent if you did not intend to express your opinion upon the scope of his invention?

Ans. I did intend to express an opinion that any proper or reasonable construction of the claim, in view of the facts, and for the

reasons which I have stated, a sufficient scope could not be given in the second claim to include the defendants' structure.

X Int. 16. The facts referred to and reasons given, which you mention in your last answer, appertain to these prior patents and the file-wrapper, do they not?

Ans. Yes, sir.

X Int. 17. Is it a fact that one object of the complainant's invention is to give shape to the entire dress skirt as well as to support it?

Ans. I understand that to be the object of all garment forms, or of very many of them at least. If they did not to a general extent give shape to the garment they would be useless articles as supporters.

X Int. 18. You don't mean exactly that, do you, that it is
71 the object of all garment stands to give shape to a dress skirt?

Ans. I mean that a garment form, or stand, has for its object to give form and support to the garment, and as I understand it, it is immaterial whether the garment be a skirt or other garment. If it be for a skirt, it must have the shape of a skirt. If it be for a waist, it must have the shape of a waist. If it be for trowsers, it must have the shape of trowsers. The object is the same in one case as the other. The garment does not qualify the object.

X Int. 19. Is it not true that to accomplish the best results in giving form to a dress skirt that the device should be expansible in all directions, and in this respect is distinguished from adjustable garment stands, prior to the date of the complainant's patent?

Ans. No, sir. It is not necessary to a skirt form that it should be adjustable any more than the form for any other garment. If the form for a skirt, or the form for a corset, or the form for trowsers, is to be adapted to different sizes, then the form must be adjustable, but for a standard size a standard form would be used. It is not less true of a dress-skirt form than of a form for any other garment that the form should be expansible. The expansibility is alike advantageous in all cases, because it not only adapts the various forms to different sizes of garments, but permits the contraction of the form for the placing of the garment thereon, and then the garment may be distended by expanding the form.

72 X Int. 20. I do not think you quite understood my question. I meant to ask you whether it was not necessary for the accomplishment of the best results in an adjustable dress form that it should be expansible in all directions circumferentially, and that that feature of the complainant's patent is one distinction between it and the garment stands as you have called them of the prior patents?

Ans. That is a desirable feature, no doubt, but that peculiarity does not distinguish complainant's patent from previous garment forms, although it is in fact the peculiar feature which was embodied in the original application of the complainant's patent. Precisely that result of expansibility in all directions circumferentially is the feature of the prior Ferris patent in this case; and it is no more necessary for the accomplishment of the best result in

complainant's patent than it would be in the Ferris patent where the design is for a corset.

X Int. 21. Please indicate what form you find in the Ferris patent which is expansible in all directions, and of what shape you find that form?

Ans. I quote from the patent: "A frame-work *e*, constructed of umbrella-like ribs and braces, or equivalent devices, may be placed between the two boards C, D, (which form the top and bottom of the frame), so that when stretched or spread laterally, such frame-work *e* will bear against the inner side of the corset that is placed around the board and tend to impart to it the requisite fulness."

73 This frame-work is made expansible from top to bottom by braces such as I have before described.

The corset is placed around the form, the frame-work extended, and "by bearing against the inner side of the corset, gives fullness to the same."

X Int. 22. In other words, you find, do you not, that there are two umbrella-like frames so arranged that they may be expanded to fill the corset, producing the same result that would be attained by filling the corset with paper or any other material, but that there does not exist any well-defined form which is expansible and which imparts its own shape to a garment which is placed upon it, the general shape being the same whether fully expanded or fully contracted?

Ans. If by your question you mean to imply that the dress form of the patent has any capacity to shape the skirt of a dress other than that which the skirt possesses without the form, then you misunderstand the skirt form and its use. The corset form is unquestionably designed to completely fill the corset as it would naturally be on the person, and the skirt form, as I understand it, is not to fill the skirt as if stuffed, but simply to support the skirt as it would be on the person of the wearer when supported by the under garments. The corset form of the Ferris patent is intended to go farther toward giving shape to the corset than a skirt form, because it must necessarily fill the corset, while a skirt form may not so completely fill the skirt.

74 X Int. 23. Then I understand that you do not find in the Ferris patent a corset form which imparts its shape to the corset placed upon it. Am I correct?

Ans. It certainly does to the same extent that a dress form imparts its shape. If you mean that the form itself molds the corset into a shape different from its normal shape, then I say of the Ferris corset form as I say of the skirt form, neither can impart its shape to the garment. In both cases they simply serve to distend the garment without changing the shape.

X Int. 24. The umbrella-like frames have no resemblance to the shape of a corset, do they?

Ans. Taken by themselves they do not resemble a corset shape any more than the distending devices of a dress form resemble the form of a dress skirt.

In the Ferris patent the umbrella-like frames are the distending

devices, and those frames are connected by tapes up and down which form the frame-work for the inside of the corset.

X Int. 25. Do you find any substantial difference between the upright ribs of the defendants' skirt form, when constituents of a skirt form, and the upright ribs of the complainant's patent when considered as the constituents of the skirt form? That is any substantial*ly* difference between the structures composed by each.

Ans. It being common at the date of the Hall patent to make garment forms with individual ribs, and also in sections, I
75 think the sections would then and are now to be considered as broad ribs. But I do not think that the ribs of defendants' device the equivalents of the ribs of complainant's patent for the reason that by the employment of individual ribs the construction described in the patent permits an independent adjustment of individual ribs, so that particular ribs are made adjustable independent of all the others. This adjustment cannot be obtained in defendants' device, and for that reason the ribs of defendants' form are not the equivalent of the individual ribs of the patent in suit.

X Int. 26. Do you understand that the adjustment of a single rib is contemplated in the arrangement set forth in the second claim of the patent?

Ans. The claim calls for ribs, *c*. The ribs *c* are described as single ribs, and they are the same ribs as mentioned in the first claim of the patent as ribs *c*. Under that claim so specifically stating the same ribs *c*, specific devices for the individual adjustment of the ribs are made the subject of the combination, and if the ribs of the second claim be the same ribs as the ribs *c* of the first claim, then the ribs *c* of the second claim must necessarily be individual ribs and not sections. If I misunderstood the question and you only refer to the adjustment of individual ribs then I do not understand such adjustment to be essential to the combination claimed in the said second claim, for the reason that the individual adjustment can only be made in the lower part of the form while the adjusting de-
76 vices of the second claim relate only to the adjustment of the upper part of the form independent of the adjustment below.

X Int. 27. Is the principal ground for your opinion that the complainant's patent is limited to the specific form of ribs shown, that they are called the ribs *c*?

Ans. I have not said anything about the patent being limited to any particular form of ribs. I have said what the ribs *c* in fact are, but as to the limitation of that form it is not for me to express an opinion.

X Int. 28. But you say the defendants' ribs are not substantially the same?

Ans. I say, if the court shall find that the ribs of the form in the patent specifically indicated by the letter *c* in the claim are individual ribs, and that a form made up of sections is a different structure, because of, by their individuality they possess certain adjustments which sections cannot possess, then I should say they are not substantially the same.

X Int. 29. You find the double braces of the defendants' form

substantially the same as those of the complainant's patent, do you not—individually considered.

Ans. In the sense that they are the same as in the Balch patent, yes, sir. No further.

X Int. 30. You consider the collars to which the two series of braces are attached, individually considered, are the same as the collars to which the double braces of complainant's patent are attached, excepting that the lower one has a screw-thread, do you not?

77 Ans. No, sir. For the reasons already given, I do not.

X Int. 31. They are both collars, are they not, which revolve upon the standard.

Ans. No, sir; they are not, in the sense that the collars revolve on the standard of complainant's patent, and for the reasons already given.

X Int. 32. Do you not find a collar pinned to the shaft which resists an upward vertical movement of the upper collar?

Ans. I find a collar pinned to the shaft which resists movement of the collar either up or down.

X Int. 33. The resistance to the downward movement would be rendered unnecessary, would it not, if elastic bands encircled their ribs?

Ans. I do not think it would be practical to put elastic bands around the defendants' form to support the upper collar. Such might be the fact with numerous individual ribs, and with the adjustment like complainant's patent, but I think would not in a sectional form like the defendants'.

X Int. 34. Have you tried it?

Ans. No, sir.

X Int. 35. Could not the lowest set of braces of complainant's form be adjusted after the double braces?

Ans. Certainly. I have said so, and told the result which would arise from the independent adjustment.

X Int. 36. Do you find any set-screw in the upper rest of the complainant's patent?

78 Ans. I find it described, but not illustrated. Owing to the close position of the posts in Fig. 2, it would have been impracticable to have shown a set-screw such as is shown in the other two rests.

X Int. 37. Independent of the difficulty which you have imagined would occur from having the upper rest of complainant's dress form fixed to the standard, namely, that of elevating the ribs, would not all the other objects of the arrangement for expanding the hip portion be accomplished as well as if it were vertically adjustable?

Ans. This difficulty does not interfere with the object of the invention. The object is the same in all dress forms.

(Signed) JOHN E. EARLE.

Subscribed and sworn to this 20th day of June, 1887, before me,
FRANCIS G. BEACH, *Sp. Ex.*

79 Circuit Court of the United States, District of Connecticut.

CHAS. A. MORSS
vs.
SAMUEL N. UFFORD & SON.

I, Francis G. Beach, a notary public, in and for the State of Connecticut, and examiner, by consent, in the above-entitled cause, do hereby certify that the foregoing depositions were taken by me to be used on behalf of the defendants in the above-entitled cause. That the said depositions were reduced to writing by me from the statements of, and in the presence of the witnesses and counsel, as appears in the body of the said depositions. That I am not of counsel for either of the parties, and am not interested in the event of said cause.

In witness whereof I have hereunto set my hand and seal, this 17th day of August, A. D. 1887.

[SEAL.] FRANCIS G. BEACH,
Notary Public.

And on the 2d day of March, 1888, motion to prohibit defendants from taking further proofs was filed in the words and figures following, viz:

80 Circuit Court of the U. S. In Equity.

CHAS. A. MORSS
vs.
W. H. KNAPP *et al.*

Motion for order that testimony be closed and defendant prohibited from taking further proofs.

And now comes Chas. F. Perkins, of counsel for the complainant, and moves that the evidence in this cause be closed and that the defendants be prohibited from taking any further proofs.

CHAS. F. PERKINS,
Counsel for Chas. A. Morss, Compl't.

M'ch 2, 1888.
Motion granted.
Attest: E. E. MARVIN, *Clerk.*

And on the same day affidavit of John E. Earle was filed in the words and figures following, viz:

81 Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS *vs.* W. H. KNAPP *et al.* } In Equity.

Affidavit of John E. Earle, for defendants, on motion "to prohibit the defendants from taking further proofs and to expunge any deposition taken since the close of complainant's evidence *and* reply.

John E. Earle, being duly sworn, deposes and says:

He resides in New Haven, Conn.; is fifty-seven years of age, and is by profession a solicitor of patents; that he has testified as expert in a very large number of patent causes in this and other circuits during the past eighteen years.

That he was called as expert on the part of the defendants in the case of C. A. Morss *vs.* Samuel N. Ufford *et al.*, and that he was asked for his understanding of the invention illustrated and described in letters patent No. 233,240, dated Oct. 12th, 1880, granted to John Hall, and as particularly recited in the second claim of the said patent, the said patent being the patent in suit in the above-entitled cause; that in answer to the question he gave his understanding as it appeared to him on the face of the patent and the said second claim thereof.

That at the time of his making such answer he had never seen one of the complainant's forms or forms made in accordance with the said patent, and not until this morning has he had an opportunity to examine such a dress form.

That in the said affidavit he included as his understanding of the claim only the elements of combination recited therein, but upon now examining a dress form made in strict accordance with the drawings and specifications of the said patent he finds that
82 the elements of combination recited in the said second claim are in themselves wholly inoperative and can produce no useful effect whatever in a dress form; that without another element, described in the specification, adjustment of the ribs is impossible.

The ribs of the form must be held by something surrounding and connecting all the individual ribs, and this something must be of an elastic or flexible character, and in the patent it is described as an elastic band.

That the two collars h^1 and h^2 of that claim are necessarily arranged the one above the upper series of braces and the other below the lower series of braces and, so arranged, they resist the tendency of the band which is placed around the ribs to contract the form and hold the upper series of braces against its collar.

That without such band around the ribs the upper collar is in no sense sustained, but, on the contrary, will drop until it meets the collar below, which is substantially the greatest possible expansion of the form, and no contraction of the form can be made by any adjustment of the braces through the collars h^1 and h^2 of the patent without the presence of the surrounding band. With the said sur-

rounding band to co-operate with "standard *a*, ribs *c*, the double braces c^2, sliding blocks f^1 f^2, and rests h^1 h^2 the combination becomes operative, but without such elastic band the combination is entirely useless and has no capacity for adjustment or practical support for the ribs. In fact the dress form of complainants, made in strict accordance with the said patent, with the said elastic band omitted, is wholly inoperative and useless.

In defendants' dress form there is no such elastic band or any equivalent therefor nor can such an elastic band or any equivalent for it be employed in defendants' form to produce any useful result.

83 Instead of the employment of the elastic band, whereby the braces and the ribs are held in their respective positions and made adjustable through the adjustable collars for the respective series of braces, in defendants' form the ribs are suspended by the upper series of braces made fast to the central rod and not adjustable thereon and the adjustment of the upper portion of the form is made solely by the adjustment of the lower series of braces.

In view of the necessity of the presence of the elastic or flexible adjusting band around the ribs in complainant's dress form the construction for and method of adjustment in complainant's form are wholly and materially different the one from the other.

Accompanying this affidavit is a dress form marked for identification "Complainant's Dress Form" and also a dress form marked for identification "Defendants' Dress Form in Suit."

JOHN E. EARLE.

CITY AND COUNTY OF NEW HAVEN, *State of Connecticut*, } *ss:*

Subscribed and sworn to before me this 2d day of March, A. D. 1888.

FRED. C. EARLE,
[SEAL.] *Notary Public.*

And on the same day affidavit of John K. Beach was filed in the words and figures following, viz:

84 Circuit Court of the United States, District of Connecticut.
In Equity.

CHARLES A. MORSS }
vs.
W. H. KNAPP *et al.* }

Affidavit of John K. Beach, for defendants, on motion "to prohibit the defendants from taking further proofs and to expunge any deposition taken since the close of complainant's evidence in reply."

John K. Beach, being duly sworn, deposes:

I am solicitor and of counsel for the defendants and am solicitor

for the defendants in another suit, in the district of Massachusetts, entitled Charles A. Morss *vs.* Samuel N. Ufford & Son.

While the testimony in the last-named case was being taken, to wit, about the 6th of July, 1887, I entered into a stipulation with Mr. Chas. F. Perkins, the complainant's solicitor, in which it was agreed that the testimony in the Massachusetts case might be the testimony in both cases, and that the record should be made by filing printed copies of that testimony with the clerk of the Connecticut circuit court on or before the 3rd Tuesday of September, 1887, at the opening of the court on said day.

My object in insisting on this latter provision was to try the Connecticut case first, that being the first suit brought and being brought against the manufacturers themselves, while the Massachusetts case was a subsequent suit brought against a customer.

Some time before the 27th of September I notified Mr. Perkins that I had noticed the case for trial and would consult his convenience as to the day, and in reply received a letter dated September 19th, 1887, in which Mr. Perkins said his testimony was not
85 yet printed, and that he should insist on trying the Massachusetts case first, even if he had to submit to the bill being dismissed in the Connecticut case. He did not file his testimony on the day specified, and for that reason and his absolute refusal to argue the case I was unable to have the Connecticut case tried first.

The whole object of the stipulation, so far as I was concerned, was thus defeated by this refusal and neglect on the part of Mr. Perkins to conform to its terms.

I then sent to Mr. Perkins a stipulation that both cases should be argued at the same time before Judge Colt, at Providence, as a halfway place, asking him to sign it and return it to me if satisfactory. He replied, saying that he had received my draft of stipulation, but did not say whether he had signed it, and did not return it to me. I again called his attention to the matter in a subsequent letter, saying "I infer that the stipulation is approved and that the case (the Massachusetts case alone, if you prefer, though I thought we might as well include the other) will be argued before Judge Colt, at Providence."

It was then my understanding, as suggested in the above letter, that Mr. Perkins did not want the cases argued together, and, as I had no earnest desire to have them both tried at once, I did not press him further to sign the stipulation above referred to.

After this and just before the argument to Judge Colt I discovered for the first time that the combination of the second claim, which alone was in dispute, was of itself a useless and inoperative aggregation of parts which could not be made to coact so as to perform an- useful purpose without the addition of certain elastic bands mentioned in the specification, but not referred to in the claim.

It was then too late to offer proof of the fact in the Massachusetts case and I determined to argue that case without reference
86 to such defense of want of patentable combination between the elements of the claim, but to reserve it for the Connecticut case.

Accordingly that defense was not raised by the defendants before Judge Colt and was not considered by him in the opinion which he subsequently rendered.

I did not then and do not now, after again examining the correspondence, understand that any agreement existed by virtue of which I could be deprived of the right to take testimony in the Connecticut case, since the failure of Mr. Perkins to keep his stipulation as to filing testimony therein and his refusal to sign the stipulation agreeing to argue both cases together left the two cases entirely distinct.

Judge Colt, after holding the case for three months, decided it in favor of the complainants, and *on* immediately on learning of this decision I notified Mr. Perkins that I should take testimony in the Connecticut case, but having since then received notice of the present motion I decided not to proceed with such testimony until this motion is decided.

JOHN K. BEACH.

UNITED STATES OF AMERICA, } *ss:*
District of Connecticut, }

Personally appeared the aforesaid John K. Beach, the signer of the foregoing affidavit, and made oath that the same is true before me this 2nd day of March, A. D. 1888.

FRANCIS G. BEACH,
[SEAL.] *Notary Public.*

And on the 21st day of March, 1888, motion for injunction *pendente lite* was filed in the words and figures following, viz:

87 Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS
vs.
WILLIAM H. KNAPP *et al.* } In Equity.

Motion for a Preliminary Injunction.

And now comes the complainant in the above-entitled cause and moves this honorable court to order an injunction to issue pending this cause enjoining and restraining the defendants, their agents, servants, and confederates, from making, using, and vending articles substantially like the Exhibit Defendants' Dress Form.

CHAS. A. MORSS,
By CHAS. F. PERKINS,
His Attorney.

And on the same day affidavit of Samuel N. Ufford was filed in the words and figures following, viz:

88 Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS
vs.
W. H. KNAPP *et als.*

Affidavit of Samuel N. Ufford.

I, Samuel N. Ufford, of Boston, Massachusetts, on oath depose and say that I am sixty years of age, and the senior member of the firm of Samuel N. Ufford & Son. I have been engaged in the business of selling dress and garment forms in said Boston for twenty years, during a part of which time I have retailed some of the dress forms manufactured by the Union Form Company, of New Haven, Connecticut, which firm is composed of W. H. Knapp, C. L. Knapp and C. I. Hague. I am the Samuel N. Ufford against whom, jointly with Charles A. Ufford, my partner, a suit in equity was brought by Charles A. Morss, of said Boston, in the circuit court of the United States in the district of Massachusetts, for an infringement of the second claim of letters patent of the United States issued to one John Hall for an adjustable dress form, numbered 233,240, dated October 12, 1880, which said suit is numbered 2378, and in which a decree was entered against me and my codefendant on the 23d day of February, 1888. The dress form offered in evidence in said suit which is marked "Complainant's Exhibit De-
89 fendants' Dress Form" was bought by me of the said Union Form Company. I had no interest whatever in the result of the said suit. I sent the subpœnas which were served upon me in said suit to said Union Form Company, who thereupon employed counsel and took entire charge and control of the case. I never conferred with or saw their counsel. I was never consulted about the management of the case. I was not notified of the taking of proofs, nor of the time of argument. I did not know, except by hearsay, that the evidence had been taken and the case argued, until I was informed of the decree. At the time the suit was begun against me the said company told me that they would assume the defense of the case, employ counsel, and protect me against all damages and costs recovered against me, which partly appears by the letter annexed hereto and marked "B," which was written to me by said company. They have not called upon me to contribute any part of the expense or to render any aid or assistance whatever in the defense of said suit. At the time said suit was begun, I knew that a suit in equity for an infringement had been brought by said Morss against the said Union Form Company, in the circuit court of the United States for the district of Connecticut, upon the said patent, and I understood that the suit against me was simply a test case for the suit against them in Connecticut.

In witness whereof I hereunto set my hand, this 7th day of March, A. D. 1888.

SAM'L N. UFFORD.

SUFFOLK, *ss:*

MARCH 7TH, 1888.

Personally appeared before me the above-named Samuel N. Ufford, and made oath to the truth of the above statement by him subscribed.

[SEAL.] CHAS. F. PERKINS,
Notary Public.

90 "B."

Union Form Company, manufacturers Knapp's patent adjustable dress forms, Knapp's patent adjust- skirt forms, folding draping stands, 52 Fulton, cor. Cliff St., New York.

Sales agents, Knapp & Hague.

NEW YORK, *March* 16, 1887.

Mr. S. N. Ufford.

GENTLEMEN: Your favor at hand. We will confer with our lawers and will advise you what steps to take in a few days. Have no fear; we will protect you as promised.

Respectfully, KNAPP & HAGUE.

And on the same day affidavit of Charles A. Ufford was filed in the words and figures following, viz:

Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS
vs.
W. H. KNAPP *et als.*

Affidavit of Charles A. Ufford.

I, Charles A. Ufford, of Boston, Massachusetts, on oath depose and say that I am 31 years of age, and the junior member of the firm of Samuel N. Ufford & Son. I am one of the nominal defendants in the suit in equity in the circuit court of the United States, of the district of Massachusetts, brought by Charles A. Morss, of Boston, for an infringement of letters patent numbered 233,240, in which suit a decree was entered against me and my partner
91 on the 23d day of February last past. I had no interest whatever in the result of the said suit. The infringement alleged was the selling of dress forms, which the firm of which I am a member bought of the Union Form Company, whose members are W. H. Knapp, C. L. Knapp and C. I. Hague, of New Haven, Connecticut. I was informed that a suit had been brought against them by Charles A. Morss upon the same patent, and I understood that the suit against me was merely a test case for a suit against said company. The Union Form Company agreed to protect our firm against any judgment for damages or costs, and undertook the entire charge and control of the case. I did not know when the proofs were taken or when the case was argued, and contributed

no part of the expense of the litigation. I had nothing whatever to do with the case, excepting in name, and considered it practically a suit against the Union Form Company.

In witness whereof I hereto set my hand this 7th day of March, 1888.

CHAS. A. UFFORD.

SUFFOLK, *ss:*

MARCH 7TH, 1888.

Personally appeared before me, the above-named Charles A. Ufford, and made oath to the truth of the above statement by him subscribed.

[SEAL.] CHAS. F. PERKINS.
Notary Public.

And on the same day affidavit of Everett Morss was filed in the words and figures following, viz:

92 Circuit Court of the United States, District of Connecticut.
In Equity.

CHARLES A. MORSS
vs.
WILLIAM H. KNAPP *et al.*

Affidavit of Everett Morss.

I, Everett Morss, of Boston, Massachusetts, on oath depose and say that I am 23 years of age, and I am engaged in superintending certain departments of the manufacturing business of Charles A. Morss, of said Boston, who is my father and the complainant in this case. I am personally acquainted with William H. Knapp, Charles L. Knapp and C. I. Hague, all the defendants in this case. On or about the 18th day of October, 1887, and after the beginning of the suit against Samuel N. Ufford *et al.*, referred to in the affidavits of Samuel N. Ufford and Charles A. Ufford, which I have read, I met the defendant, William H. Knapp, who is the senior partner of The Union Form Company, the defendants in this case, at the Astor house, in New York, for the purpose of conducting certain negotiations between my father, the complainant in this case, and the defendants. There were also present Mr. E. M. McPherson, of Boston, and R. R. Appleton, of New York. We talked about the argument of the infringement suits, and William H. Knapp stated that his company had employed the best counsel in the country and had paid a retainer of five hundred dollars, and that they were sure to win the suit. I told him that we were pushing the case as fast as possible, and that it would be set down for argument soon.

I next met him on or about the 18th day of November, at the place of business of the Union Form Company, in New York,
93 and all the defendants were present. They all took part in the conversation, but William H. Knapp, the senior partner, had the most to say. He stated that they did not care to nego-

tiate any further, as there had been so much delay; that the expense of the litigation would be but little more, and they would prefer to fight it out. They said the whole thing would soon be settled by the court; that the case was set down for argument for the 3d or 10th of December. I stated that the case would probably not be decided for two or three months after the argument; but he stated that they were going to urge Judge Colt to decide the case immediately, and they would probably get a decision in a fortnight. In all our conversations there was never any distinction made between this suit and the suit against Ufford in the Massachusetts district. They were always treated as the same case.

On or about the 1st of December, 1887, I met C. I. Hague, one of the defendants, in Boston, and he wanted to know if I was going to Providence to attend the argument of the case. He stated that he and the other two defendants would be there. I attended the argument of the case at Providence, on the 10th day of December, 1887. Mr. C. L. Knapp, one of the defendants, was present, and I saw him confer with the counsel for the defendants during the argument. I know that dress forms exactly like "Exhibit Defendants' Dress Form" have been on sale by the defendants constantly since the beginning of this suit, and still are.

EVERETT MORSS.

SUFFOLK, *ss.*:

BOSTON, *March* 20, 1888.

Personally appeared the above-named Everett Morss and made oath to the truth of the foregoing affidavit by him subscribed.

Before me,

CHAS. F. PERKINS,
Notary Public.

[SEAL.]

94 And on the same day affidavit of Ebenezer M. McPherson was filed in the words and figures following, viz:

Circuit Court of the United States, District of Connecticut. In Equity.

CHARLES A. MORSS
vs.
WILLIAM H. KNAPP *et al.*

Affidavit of Ebenezer M. McPherson.

I, Ebenezer M. McPherson, of Boston, Massachusetts, on oath depose and say that I am fifty-one years of age, and a member of the governor's council of the State of Massachusetts. I have had some business connection with the complainant in this case in the manufacture and sale of dress forms, to which the above-named suit relates. I was present at the Astor house in New York on or about the 18th day of October, 1887, at the interview of said date referred to in the affidavit of Everett Morss in this case, which I have read.

I remember that the conversation which took place at that interview was substantially the same as that stated in the said affidavit of Everett Morss.

EBENEZER M. McPHERSON.

SUFFOLK, *ss:*

BOSTON, *March* 21, 1888.

Then personally appeared the above-named Ebenezer M. McPherson and made oath to the truth of the foregoing affidavit by him subscribed.

Before me,

[SEAL.] CHAS. F. PERKINS,
Notary Public.

And on the 23rd day of March, 1888, affidavit of Ruel R. Appleton was filed in the words and figures following, viz:

95 Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS
vs.
W. H. KNAPP *et als.*

Affidavit of Ruel R. Appleton.

I, Ruel R. Appleton, of Brooklyn, New York, on oath depose and say that I am thirty-three years of age; that I am now and have been for the part ten years general manager of the Brooklyn office of the Wheeler & Wilson Manufacturing Company. For the part two and one-half years I have had the agency for the sale of the dress forms manufactured by the complainant in this case. I have employed my brother, J. W. Appleton, to superintend the wholesale part of this business, and I have given especial attention to the retail trade for and on account of the Wheeler & Wilson Manufacturing Company at its said office in Brooklyn. The dress forms manufactured by the complainant were the first adjustable and portable dress forms introduced into the market and the agency was placed in my hands and the goods supplied to me by the complainant at a low figure on the condition that I should extensively introduce them and establish a trade. I have expended large sums of money in advertising, it having cost me in a single year upwards of four thousand dollars. I had just begun to get profitable returns from my investment of time and money when the defendants extensively introduced into the market dress forms like the Exhibit Defendants' Dress Form. The defendants put their goods into the market after the demand had been established by me, and they were thereby exempted from the outlay which is incident to a pioneer business. For the past one and a half years the
96 competition with the defendants' goods has been fierce and I have been put to great expense to meet the peculiar methods which the defendants have taken to injure our business. After this suit was begun against them they offered to give up the business

and turn over their customers to the complainant if he would manufacture their particular styles of dress forms for their trade and pay them one-fourth of the profits thereon. This offer was made at the Astor house by their general manager, W. H. Knapp, on or about the 18th day of October, 1887, in the presence of Mr. Everett Morss and E. M. McPherson, at which time said Knapp stated that the defendants had sold ten thousand dress forms in the preceding year. Subsequently, said W. H. Knapp called at my office in Brooklyn and, at the request of the complainant, I told him his offer would be accepted if he would verify his said statement as to the number of dress forms he had sold. He said he would go before a notary and verify his statement. Subsequently I met him and he withdrew his said offer, saying he would be foolish to accept, as he could do better with the Domestic Sewing Machine Company.

At one of these interviews he asked me if I did not think the complainant would pay him more if he should cut prices and put his goods on the market for less than the complainant. I told him no. He then left my office and shortly after the price of several styles of his dress forms was reduced. In one instance or upon one style the price was reduced from three dollars to two dollars and a quarter and the reduction was generally advertised. One of the largest dealers of the defendants' dress forms, Henry Bristow, of said Brooklyn, whose store is but five doors from mine or the said office of the Wheeler & Wilson Manufacturing Company, displayed large placards advertising the said reduction. I met said Knapp and told him what was being done by the dealers in his dress forms and asked him if he was going to al-
97 low it to continue, to which he replied, "Oh, that is all right."

At the reduced prices the business could not succeed, and if the conduct of the defendants should continue our business would be ruined. I am confident that they cannot carry on the legitimate business of manufacturing and selling their dress forms at the prices advertised. The said reduction in price has already injured the market considerably, and the restoration of prices to a fair profit would be a difficult, if not impossible, thing to accomplish if the reductions should continue through the season which is now approaching its height. We have held our prices as firmly as possible for a long time, awaiting the trial and decree in the suit against one of the customers of the defendants, and have almost despaired of being able to retain the prices above the cost of production and sale. In my opinion it is vital to the continuance of our business that we should at once be protected against the infringement of the defendants. The complainant's patent can be of little or no commercial value unless the defendant- are summarily enjoined against the manufacture and sale of their dress forms.

RUEL R. APPLETON.

Subscribed and sworn to before me this sixteenth day of March, 1888.

J. JOSEPH SCULLY,
[SEAL.] *Notary Public, N. Y. County.*

And on the 28th day of March, 1888, decree for injunction *pendente lite* was made and entered in said cause, viz:

98 United States Circuit Court, District of Connecticut.

CHARLES A. MORSS
vs.
W. H. KNAPP *et als.*

At a stated term of the circuit court of the United States of America for the district of Connecticut, held in Hartford, Connecticut, on the 28th day of March, A. D. 1888.

Present: The Hon. Nathaniel Shipman, district judge.

Upon reading and filing notice of motion for an injunction herein and proof of service thereof, with the affidavits of the complainants annexed thereto, and on reading and filing affidavits on behalf of the defendants, and counsel for the respective parties having been heard, and the same having been duly considered by the court, and it appearing that letters patent of the United States were issued in due form of law on the 12th day of October, 1880, to John Hall for an adjustable dress form, said letters patent being known and distinguished as issue No. 233,240, and subsequently assigned to the complainant herein, and that the said defendants, William H. Knapp, Charles L. Knapp, and Clinton I. Hague, have infringed the right secured by the second clause of claim of said letters patent by manufacturing, making, and selling to others dress forms manufactured and made according to the invention set forth in said second clause of claim, contrary to the form of the statute in such case made and provided:

99 Now, therefore, it is hereby ordered, adjudged, and decreed that an injunction be issued, pursuant to said motion and the prayer of the bill herein, strictly commanding and enjoining the said defendants, William H. Knapp, Charles L. Knapp, and Clinton I. Hague, or either of them, and the clerks, attorneys, agents, servants, and workmen of said defendants and of each of said defendants, under the pains and penalties which may fall upon them and each of them in case of disobedience, that they forthwith and until the further order, judgment, and decree of this court desist from making, using, or selling any dress forms made in accordance with the invention set forth in the second clause of claim of the letters patent aforesaid.

But the service of the writ of injunction shall be stayed until twelve o'clock at noon on the 17th day of April, A. D. 1888.

N. SHIPMAN,
District Judge.

And on the 16th day of April, 1888, writ of injunction issued out of court, directed to the said defendants, which was duly served and returned, and which, with the return of service endorsed thereon, is in the words and figures following, viz:

100 The President of the United States of America to William H. Knapp, Charles L. Knapp, and Clinton I. Hague, all of [SEAL.] New Haven, in said district of Connecticut, their clerks, attorneys, agents, servants, and workmen, Greeting:

Whereas it has been represented to us in our circuit court of the United States for the district of Connecticut that letters patent of the United States were issued in due form of law on the 12th of October, A. D. 1880, to John Hall for adjustable dress form, said letters patent being known and distinguished as No. 233,240, and that you, the said William H. Knapp, Charles L. Knapp, and Clinton I. Hague, have infringed the rights secured by the aforesaid letters patent by manufacturing, making, and selling to others to be used dress forms manufactured and made according to the invention set forth in the second clause of the claim of said letters patent, contrary to the form of the statute in such case made and provided:

Now, therefore, we do strictly command and enjoin you, the said William H. Knapp, Charles L. Knapp, Clinton I. Hague, and your clerks, attorneys, agents, servants, and workmen, and each one of you and them, under the pains and penalties which may fall upon you and each of you in case of disobedience, that you forthwith and until the further order, judgment, and decree of this court desist from making, manufacturing, and selling, in violation of said patent and the second clause of the claim thereof, any dress forms substantially as described and claimed in the second clause of the claim of said patent.

Witness the Honorable Samuel F. Miller, senior associate justice of the Supreme Court of the United States, and the seal of said circuit court, at Hartford, in the district of Connecticut, this 16th day of April, A. D. 1888.

E. E. MARVIN, *Clerk.*

101 DISTRICT OF CONNECTICUT, } ss:
County of New Haven, }

NEW HAVEN, *April 17th,* 1888.

Then and there I made search for the within-named defendants, but, not finding them in my precincts, repaired to their attorney, who accepted service for each and all of them as per following writing:

Service accepted for all the defendants this 17th day of April, 1888.

JOHN K. BEACH,
Of Counsel for Def'ts.

Attest: NATHAN D. BATES,
U. S. Marshal,
By MILES B. PRESTON,
His Deputy.

Fees.

Travel	$3 70
Service	6 00
Copy	3 00
End'm'ts	60
	$13 30

And on the 30th day of April, 1888, interlocutory decree was made and entered in said cause, viz:

102 Circuit Court of the United States, District of Conn, April Term, 1888. In Equity.

CHARLES A. MORSS, Complainant,
vs.
W. H. KNAPP *et al.*, Defendants.

Decree.

For perpetual injunction and for reference to a master.

This cause came on to be heard at this present term upon the pleadings and proofs, and was argued by counsel for the respective parties.

And now upon consideration thereof, to wit, April 28th, it is ordered, adjudged, and decreed as follows, viz: That the letters patent referred to in the complainant'- bill, being letters patent of the United States granted unto John Hall for an adjustable dress form, numbered 233,240, and dated October 12, 1880, is a good and valid patent, and that the said John Hall was the original and first inventor of the improvement described and claimed therein, and that the said defendants have infringed the said patent, and upon the exclusive rights of the complainant under the same.

And it is further ordered, adjudged, and decreed that the complainant recover of the defendants the profits which they have received or made or which have accrued to them from said infringement by the manufacture, use, or sale of the improvement described and secured by said letters patent at any and all times since the 18th day of December, 1886, and in addition thereto the damages which the complainant has sustained thereby.

And it is further ordered, adjudged, and decreed that it be
103 referred to Edwin E. Marvin, Esq., a master of this court, to take and report to the court an account of the profits which the said defendants have received or which have arisen or accrued to them from the infringement of the patented invention by unlawfully making, using, or vending the same, as alleged in the bill, and to ascertain and report the damages, if any, in addition to the profits which the complainant has sustained thereby since the eighteenth day of September, A. D. 1886. (Because that said master is agreed upon by the parties and has had some experience in such matters is found to be sufficient reason for said appointment.)

And it is further ordered, adjudged, and decreed that a perpetual injunction be issued against the defendants, according to the prayer of the bill.

By the court:

E. E. MARVIN, *Clerk.*

April 27th, 1888.

I assent to the entry of the foregoing decree without prejudice to right of appeal.

JOHN K. BEACH,
Sol'r and of Counsel for Defendants.

And on the same day injunction issued out of court, directed to the said respondents, which was duly served and returned, and which, with the return of service endorsed thereon, is in the words and figures following, viz:

(NOTE.—Page 104 missing.—Clerk Sup. Ct. U. S.)

105 And on the 12th day of May, 1888, defendants filed petition for rehearing in the words and figures following, viz:

United States Circuit Court, District of Connecticut. In Equity.

CHARLES A. MORSS
vs.
W. H. KNAPP *et al.*

Petition for Rehearing.

The petition of defendants in the above-entitled cause, by John Dane, Jr., their counsel, respectfully show to this honorable court that the above-entitled suit was brought for an infringement of patent granted to John Hall October 12th, 1880, and numbered 233,240, granted for a period of seventeen years from its date; that a suit was brought by plaintiff, Charles A. Morss, March 15th, 1887, and that an answer was filed and replication thereto and certain testimony taken, and that the testimony so taken was by stipulation admitted as evidence in a suit then pending in the United States circuit court, district of Massachusetts, being the case of Morss against Samuel N. Ufford *et al.*, of Boston, and that upon said evidence arguments were made before the Hon. Le Baron Colt on or about the 10th day of December, 1887, who thereafter, to wit, on or about February 23rd, 1888, filed an opinion deciding said cause in favor of plaintiff; that the defendants in this cause have not been fully heard on final hearing in this court, although an injunction and an interlocutory decree pending an accounting *has* been entered against them; that since the filing of the said opinion in the district of Massachusetts and the entry of the orders in this court in the above-entitled cause newly discovered evidence has been found, and that your petitioners have sought the defendants in said Mass. suit with

a view of inducing them to petition that court to grant a
106 rehearing, which they refused to do, as will appear by the affidavit of Clinton Irving Hague, of date herewith.

And that the said plaintiff, Morss, as your petitioners are advised, waived a reference to a master for an accounting for profits and damages in said Massachusetts suit, entering a final decree therein, and that an appeal has been taken.

And petitioners further show:

First. That all of the substantial and material parts of the said patent upon which said suit was brought *was* shown and described in certain letters patent of the United States of dates anterior to that upon which this suit is based.

Second. That since the said hearing before this honorable court upon practical tests made with the combination of elements composing the claims sued upon it has been discovered that said combination of elements are entirely inoperative and wholly worthless for any practical purpose and fail entirely as a useful combination. It is therefore obvious that the patentee did not comply with the requirements of the law and the rules respecting the granting of patents for combinations.

Third. That since the filing of the opinion hereinbefore mentioned new and important evidence has been discovered which was entirely unknown to your petitioners before said hearing and opinion, which evidence bears directly upon the validity of complainant's patent. To the end, therefore, that defendants may have the legal and equitable benefit thereof, they are desirous of introducing in evidence the testimony of A. B. Shaw, of Holderness, New Hampshire; R. H. Eddy and E. P. Hale, Jr., of Boston, Mass.; William Klosterman, of the city of New York; of Robert Geisler, of Leipsic, Germany; H. T. Robins, A. F. Badger, and William Mason, of
107 Boston, Mass., all of whom had knowledge of the existence and use of devices containing the elements and combination of the claim sued upon; also letters patent of the United States to A. B. Shaw, dated November 5th, 1867, No. 70631; also letters patent of the United States No. 180,719, dated August 8th, 1876, to G. B. Kirkham; also the testimony of George W. Everitts, Wallace Norris, Oscar Butcher, and others, of the city of New York, all of whom had prior knowledge of forms containing substantially the same combination of elements as contained and specified in the second claim of the patent upon which this suit is based; also the expert evidence of John E. Earle and others regarding said inventions, patents, and exhibits herein referred to.

It thus seems possible to prove in a manner admitting of no reasonable doubt the existence and use of forms and devices clearly containing the combination of the 2nd claim of complainant's patent upon which this suit is based as the same is construed by said court at a sufficiently early date to anticipate the patented device of John Hall.

Wherefore petitioners pray—

First. That this honorable court will order a hearing upon the question of law involved therein, bearing upon the validity of the

2nd claim of complainant's patent upon which this suit is based, for the reasons hereinbefore set forth.

Second. That the proofs in the above-entitled cause may be opened for the purpose of putting in the evidence and depositions of George W. Everitts, Wallace Norris, Oscar Butcher, Robert Geisler, H. T. Robbins, A. F. Badger, William Klosterman, and others, parties having knowledge of forms and devices prior to the supposed invention of Hall embodying the elements and combinations set forth in the said 2nd claim of complainant's patent.

Also for admitting "forms" and other devices known to George W. Everitts, Wallace Norris, Oscar Butcher, and others, including letters patent of the United States to H. T. Robbins, No. 66632, dated July 9th, 1867; to A. B. Shaw, No. 70631, dated November 5th, 1867, together with a "form" made in accordance with letters patent of the United States to C. C. Wilson, No. 102,635, dated May 3rd, 1870, referred to but not in evidence on the former hearing herein, but now offered, that the court may notice its construction and witness the practical operations and results of the said invention and therefore more fully understand the same, and also the depositions of John E. Earle and others regarding said exhibits.

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Third. That the defendants be allowed to read in evidence on the new hearing herein the evidence formerly taken in connection with such new evidence and testimony to be taken, &c.

Fourth. That petitioners may have such other and further relief as may seem proper and to which they may be entitled.

And petitioners will ever pray, &c.

Dated May 11th, 1888.

WM. H. KNAPP ET AL.,
By W. H. KNAPP.
W. H. KNAPP.
C. L. KNAPP,
Per W. H. KNAPP, *Attor.*
C. I. HAGUE.

JOHN DANE, JR.,
Of Counsel for Defendants.

United States Circuit Court, District of Massachusetts. In Equity.

CHARLES A. MORSE }
vs.
W. H. KNAPP *et al.* }

I hereby certify that I have read the foregoing petition and carefully examined its contents; that in my opinion the facts set forth in said petition are sufficient as matters of law to entitle the defendants to a rehearing of the above-entitled suit and to a reopening of the proofs herein for the purposes stated in the annexed petition, and that such new evidence is sufficient to change the former result.

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Dated May 11th, 1888.

JOHN DANE, JR.,
Of Counsel for Defendants.

STATE OF NEW YORK, } ss:
City and County of New York, }

On this 11th day of May, 1888, personally appeared before me W. H. Knapp, who, being duly sworn, says he is one of the defendants herein; that he has read the foregoing petition for a rehearing in the said cause; that the averments and statements therein contained are true, as he is informed and verily believes.

W. H. KNAPP.

PAT'K DUNN,
[SEAL.] *Notary Public* (44), *N. Y. Co.*

STATE OF NEW YORK, } ss:
City and County of New York, }

On this 11th day of May, 1888, personally appeared before me Clinton I. Hague, who, being duly sworn, says he is one of the defendants herein; that he has read the foregoing petition for a rehearing in the said cause; that the averments and statements therein contained are true, as he is informed and verily believes.

CLINTON I. HAGUE.

PAT'K DUNN,
[SEAL.] *Notary Public* (44), *N. Y. Co.*

110 And on the same day affidavit of John E. Earle was filed in the words and figures following, viz:

United States Circuit Court, District of Connecticut. In Equity.

CHARLES A. MORSS }
vs.
W. H. KNAPP *et al.* }

John E. Earle, being duly sworn, deposes and says that he gave his testimony as an expert witness on part of defendants in the suit of Charles A. Morss *vs.* Samuel N. Ufford *et al.* in the United States circuit court, district of Massachusetts, which, on final hearing, was decided in favor of complainant; that he has read the decision of his honor Judge Colt in the said cause and understands the court to find that the said defendants' dress form (which is the same as "the form" in the suit at bar) infringes the 2d claim of the Hall patent, upon which this suit is based, the said 2d claim being in the following words: "In combination with the standard *a* and ribs *c* and double braces c^2, sliding blocks f^1 f^2 and rests h^1 h^2, substantially as and for the purpose set forth."

And that the said 2d claim described *in* the hip portion of the form only, and I understand the court to find the defendants' form to infringe the said 2d claim not because the double braces of defendants' form are attached respectively to blocks which slide upon the standard or because there is in defendants' form two rests which correspond to the rests h^1 h^2 of the said 2d claim, but, recognizing the fact that whereas in defendants' form the collar or block to

which the upper ends of the upper series of braces are attached is rigidly and adjustably secured to the standard, in the patent in suit the block to which the corresponding braces are hinged is
111 made adjustable on the standard by means of an adjustable rest; the court finds this difference is an immaterial one and that the stationary upper collar of defendants' form is an equivalent for the adjustable block and rest f^2 f^2, and I understand the court to find, not that defendants' dress form contains the sliding block f^1 and its rest h^1, by which that block is made adjustable on the standard, but that, on the contrary, defendants' collar, being made in the form of a nut and working upon a screw, is an equivalent for the sliding block f^1 and rest h^1 of the said 2d claim.

Since the decision in the above-entitled cause I have had my attention called to letters patent No. 70631, granted to A. B. Shaw November 5th, 1867, for an umbrella. This patent illustrates and describes an umbrella which consists of a central staff or standard, two series of braces oppositely inclined, one series above the other, the inner end of the lower series hinged to a runner or sliding block on the standard, the inner end of the upper series hinged to a similar runner or sliding block also upon the standard.

Each pair of the two series of braces are brought together at their outer ends and hinged to ribs upon which the cover of the umbrella is placed and so that the said two series of braces with their respective runners serve to hold the ribs in a distended position or permit their contraction.

The sliding block of the upper series of ribs is adapted to rest against a stationary collar on the standard; the lower sliding block is supported by a rest provided for the purpose at a point where it is desired to hold the ribs in an expanded or distended position.

This patent illustrates and describes a structure in which is a central standard, ribs surrounding said standard, double braces, sliding blocks, and rests for the respective sliding blocks, substantially as in the hip portion of the dress form of the patent in suit and as described in the decision of the honorable court before referred to.

112 In fact, the words of the claim as quoted in the same decision apply equally as well to the structure of the Shaw patent, substituting the letters of reference of the Shaw patent in the said 2d claim as follows: "In combination with the standard a^1 (A) and ribs c (C), double braces e^2 (E G), sliding blocks f^1 f^2 (D F), rests h^1 h^2 (H F), substantially as and for the purpose set forth."

Comparing the structure of the said Shaw patent with the hip portion of defendants' dress form: "In place of the upper sliding block and rest the defendants have a collar which is fixed to the standard, and in place of the lower sliding block and rest they have substituted a nut and threaded standard.

The outer (upper) ends of the braces are hinged to this fixed collar instead of to a sliding block, and the inner (lower) ends of the braces are hinged to the nut in place of the sliding block."

The Shaw patent describes peculiar construction of the ribs for

certain described purposes, but as far as their operation as ribs in the combination which I have described is concerned this peculiar construction of ribs is immaterial.

If the said 2d claim, therefore, is to be understood as requiring nothing beyond the elements recited therein to make it an operative combination, then, in my opinion, the said Shaw patent fully and clearly discloses that combination, and such combination differs from that found in the said defendants' dress form as defendants' form differs from the construction found in the Hall patent.

At the time of making my deposition in this case I had never seen a dress form made in accordance with the Hall patent in suit, nor did I see such a form until after the decision in this case. After the said decision a dress form made in full accordance with the said Hall patent in suit was presented for my examination, said form
113 being like the dress form made an exhibit herein and marked "Defendants' Exhibit Hall Patent Form," and upon examination of that form I found that the elements recited in the 2d claim of the patent as in combination were wholly inoperative and useless without the presence of another element not mentioned in said claim—that is to say, a flexible band around outside the upper end of the ribs to hold them. Without this band it is impossible to adjust or support the ribs in any practical or working condition.

The upper sliding block is loose on the standard above. The band around the ribs serves to hold that upper sliding block against its rest on the standard. If the band be removed all support for the upper sliding block is removed, and it instantly falls until it comes to a stop upon the sliding block below, a useless and impractical position and from which no adjustment of the ribs can be made; but by the presence of the flexible band to surround the ribs and resist the tendency of the upper sliding block to fall the form becomes practical and useful.

This fact is not fully disclosed in the patent but is clearly apparent upon the examination of the said "Defendants' Exhibit Hall Patent Form." The flexible band is positively essential to the combination recited in the 2d claim of the Hall patent, and without that band the combination is wholly inoperative and useless.

In defendants' form there is no equivalent for this band or any occasion, for its use, because the upper block or collar is rigidly fixed to the standard and serves to sustain the ribs through the series of braces which connect that stationary collar with the ribs.

Since the decision in the case I have also had my attention called to United States patent No. 180,719, to G. B. Kirkam, August 8th, 1876. This patent is also for an umbrella, and it consists of a central standard, a stationary collar on the standard near its
114 upper end, a sliding block on the standard below said fixed collar, one series of braces hinged by their upper end- to the said stationary collar, a second series of braces hinged by their lower ends to the sliding block, the upper series of braces inclined downward and outward and the lower series of braces oppositely inclined—that is, upward and outward—each pair of the two series of braces hinged together at their outer ends and connected to

corresponding ribs, so that as the lower sliding block is raised or lowered the ribs will be correspondingly expanded or contracted.

In this patent, therefore, I find every element of the combination cited in the 2d claim of the Hall patent, except that in place of the upper sliding block f^2 and rest h^2 this patent shows a collar which is fixed to the standard, and in place of the lower sliding block f^1 and rest h^1 of the said 2d claim this patent shows the sliding block with a spring catch on the standard as the rest, and the construction of this patent, so far as the said combination is concerned, differs from that found in defendants' form only in the fact that the lower block in the patent slides on the standard with a catch to support it, whereas in defendants' form the said lower block is in the shape of a nut.

I have taken in consideration the fact that the Kirkham patent illustrates a peculiar connection between the ribs and braces, but so far as this combination is concerned I do not understand this difference to be material.

JOHN E. EARLE.

Subscribed and sworn to before me this 28th day of April, 1888.

JOHN H. SHUMWAY,
[SEAL.] *Notary Public.*

115 And on the same day affidavit of Joseph M. Crane was filed in the words and figures following, viz:

United States Circuit Court, District of Connecticut. In Equity.

CHARLES A. MORSS
vs.
W. H. KNAPP *et al.*

Joseph M. Crane, of lawful age, being duly sworn, deposes and says: I reside at 274 Fifth street, in the city of Newark, New Jersey. I have had more than twenty-two years practical experience in the production, construction, and operation of machinery of various kinds, and for the last twelve years I have been called upon almost weekly for the purpose of investigating and comparing inventions, improvements, and patents therefor pertaining to all classes of inventions, and I have been several times during the last twelve years called upon to testify and have testified before the court in suits in which various kinds of devices were the subject of litigation. I have carefully read letters patent granted to John Hall, No. 233,240, dated October 12th, 1880, entitled adjustable dress form, and fully understand the structure therein described and shown and its mode of operation and results.

I have also examined the dress form manufactured by the defendants herein against which this suit is brought; also the patent granted to W. H. Knapp, one of the defendants, under which said dress forms are manufactured, and I fully understand said form, its details and manner of operation. I have also carefully read and investigated the following letters patents of the United States, to

wit: No. 70631, dated November 5th, 1867; No. 180,719, dated August 8th, 1876; No. 66632, dated July 9th, 1867; No. 16340, dated January 6th, 1857, granted to A. B. Shaw, G. B. Kirkham, H. T. Robbins, and L K. Seldon respectively, all for improvements in umbrellas and parasols; also letters patent No. 269,846, dated
116 January 2nd, 1883, to R. Geisler, showing and describing an invention patented in Germany August 12th, 1880, for umbrellas. I have also carefully read an opinion by the Hon. Le Baron Colt in a recent suit of Morss, complainant herein, against Ufford *et al.*, in the 1st circuit at Boston, Massachusetts, based upon the same "patent," "claim," and "form" involved in the suit at bar, and in the light of the said opinion of his Hon. Judge Colt, based (as I understand) upon facts which failed to disclose the prior art and the operations of pre-existing contrivances, have been requested by counsel for the defendants herein to carefully compare the said patents hereinbefore specified and the combinations therein disclosed with the combinations specified in the 2nd claim of complainant's patent, with a view of determining whether such or any of them contain the elements and combination of the said second claim of complainant's patent, as such appears to have been construed by the said court in the first circuit.

To the end, therefore, I have very carefully compared the patented combination of A. B. Shaw with said 2nd claim of the Hall patent as construed by Judge Colt, and I find that it clearly and unmistakeably contains the elements and combination of factors embraced in the said 2nd claim, for in the latter I find, "In combination with the standard *a* and ribs *c*, the double braces e^2, sliding blocks f^1 f^2, and rests h^1 h^2, substantially as set forth." I find in the Shaw patented contrivance and patent the following elements in combination: A central standard, A, and ribs B, double braces E G, sliding blocks D F, and rests H *f*, which parts, will be readily observed, are the same as the parts specified in the said second claim of complainant's patent; therefore in anticipation of said claim, as I understand such to be defined by Judge Colt. I have also carefully compared the said patent to Kirkham before referred to herein with
117 the said 2nd claim of complainant's patent, and I find that this also contains every element of the said complainant's claim, as I understand it to be construed by the court in said first circuit, and the elements and factors therein shown and described are found in the same combination as those of the said second claim of complainant.

The patent to Geisler and the others mentioned contain like elements and combinations, but as I have alluded specifically to the Shaw and Kirkham patented contrivances it may be unnecessary to enter into further details respecting them, as they are unquestionably complete anticipations of the said 2nd claim of the Hall patent of complainant in suit. JOSEPH M. CRANE.

Subscribed and sworn to before me this 11th day of May, 1888.

PAT'K DUNN,

[SEAL.] *Notary Public* (44), *N. Y. Co.*

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And on the same day the affidavit of Clinton Irving Hague was filed in the words and figures following, viz:

United States Circuit Court, District of Connecticut. In Equity.

CHARLES A. MORSS
vs.
W. H. KNAPP *et al.*

Clinton Irving Hague, of lawful age, being duly sworn, deposes and says: I reside in the city of Brooklyn, New York. I am a member of the firm "Knapp & Hague," doing business at
118 No. 52 Fulton street, in the city of New York, dealers in wire cloth and other kindred articles. W. H. Knapp, one of the above defendants, is the senior member of the said firm "Knapp & Hague."

Owing to a supposed error of law in the decision of his honor Judge Colt in the case of Morss *vs.* Ufford *et al.*, in the district of Massachusetts, rendered during the present term of that court, and the discovery of new evidence found since said opinion was filed, believed to be sufficient in itself to change the decision of the court, could such error and newly discovered evidence be brought to his honor's (Judge Colt) attention, I was requested to go to Boston on the part and behalf of Mr. W. H. Knapp and see Messrs. Ufford & Son, defendants in said Massachusetts suit, and induce them to petition the court for leave to be reheard on error of law in the said opinion before referred to and newly discovered evidence which would, without doubt, justify the court in changing its decision.

I visited said Samuel N. Ufford & Son at their store, No. 42 West street, Boston, on Friday, April 27th, 1888, arriving there about 10 o'clock in the morning, at which time and place I explained to him the importance of the rehearing to Mr. Knapp and the great injury that a refusal on his part to so petition the court would work upon said Knapp.

Notwithstanding the careful explanation to him of the importance of the petition, said Samuel Ufford refused to petition or to take any action whatever in behalf of said W. H. Knapp *et al.*, saying, in substance, "that he did not want to sign it because it might be the cause of incurring the enmity of Morss, the complainant, and otherwise damaging his business relations with him and refuse to supply him (Ufford) with skirt forms, as his firm is now (then) dealing with said Morss." Failing entirely in my efforts to induce him to petition the court for a rehearing or to secure his con-
119 sent to anything that might afford relief to the defendant herein, I returned to New York and reported the facts to Mr. W. H. Knapp on his return, who was at the time absent in the South and did not return until the 3rd day of May, the present instant.

CLINTON IRVING HAGUE.

Subscribed and sworn to before me this 11th day of March, 1888.

PAT'K DUNN,
[SEAL.] *Notary Public* (44), *N. Y. Co.*

And on the same day the affidavit of W. H. Knapp was filed in the words and figures following, viz:

United States Circuit Court, District of Connecticut. In Equity.

CHARLES A. MORSS *vs.* W. H. KNAPP *et al.* } On Motion for Rehearing.

W. H. Knapp, being duly sworn, deposes and says: I have already made an affidavit in this cause. The evidence referred to in the petition of petitioners herein was not known to any of the defendant members of the firm or company, of which I am one, until since the injunction and order entered in the suit pending in this court, notwithstanding the fact that I personally gave largely of my time for that purpose and more than any other of my codefendants, and, with all diligence, careful inquiry, and search, failed to discover the evidence and patented devices described in letters patent No. 70631, to A. B. Shaw, of November 5th, 1867; to G. B. Kirkham, No. 180,719, of August 8th, 1876; also letters patent to
120 H. T. Robbins, No. 66632, of July 9th, 1867; also German letters patent to Robert Geisler of 1880, until my attention was directed to them by Mr. Dane within the last week.

I therefore positively declare that I was unable to find and did not know of the evidence or any of it above referred to until the same was disclosed by Mr. Dane, as above stated.

W. H. KNAPP.

Subscribed and sworn to before me this 12th day of May, 1888.

PAT'K DUNN,
Notary Public (44), *N. Y. Co.*

United States Circuit Court, District of Connecticut. In Equity.

CHARLES A. MORSS *vs.* W. H. KNAPP *et al.* }

W. H. Knapp, of lawful age, being duly sworn, deposes and says: I reside in the city of Brooklyn, New York. I am the senior member of the firm "Knapp & Hague," doing business at No. 52 Fulton street, New York city, dealers in wire, wire cloth, and other kindred articles. I am also a member of "The Union Form Co.," of New Haven, Connecticut, manufacturers and dealers in dress forms, among which is that of the kind against which the present suit is this court is based, which is the same as the one involved in the Massachusetts suit recently decided adversely to defendants (Ufford *et al.*) by his honor Judge Colt. That since the filing of

the opinion in said Massachusetts court newly discovered evidence has been found not before known to this affiant, which is
121 said to be and which I verily believe sufficient to change the decision and decree not only in said Massachusetts district, but also to cause this court to consent to a hearing based upon the newly discovered evidence and grant an order for a stay of proceedings now pending before the master of this court. This affiant further states that before making the present affidavit he caused one of his partners in business, Mr. Clinton Irving Hague, to proceed to Boston, Massachusetts, to consult with Messrs. Samuel N. Ufford & Son of that city, who were defendants in the suit of Morss *vs.* Ufford *et al.* in the United States circuit court in that district, who were enjoined by that court after final hearing from making and selling the "form" made by my said company in New Haven, Connecticut, which is the same as the one against which the present suit is based now pending in this court, with a view to induce them to petition that court (district of Massachusetts) for a rehearing, in order that myself and codefendants might have relief, first, indirectly, from that source, and, finally, from this court, in a more formal manner, but the request was not conceded, as will appear from the sworn statement of Mr. Clinton I. Hague entitled in this case; and, lastly, affiant states that from the affidavits of John E. Earle and others it appears that the elements and factors composing the features of the combination of the claim sued upon are not practical for any useful purpose. Moreover, I have within the last week carefully tested a skirt form that is made in accordance with the Hall patent upon which the present suit is based, and I am positive that it cannot be operated or serve any practical purpose whatever without the addition of an element not mentioned or included in the said combination.

WM. H. KNAPP.

Subscribed and sworn to before me this 11th day of May, 1888.

PAT'K DUNN,

[SEAL.] *Notary Public* (44), *N. Y. Co.*

122 And on the same day the affidavit of John Dane, Jr., was filed in the words and figures following, viz:

United States Circuit Court, District of Connecticut, in Equity.

CHARLES A. MORSS }
vs.
W. H. KNAPP *et al.* }

John Dane, Jr., of lawful age, being duly sworn, deposes and says: I am counsel for the defendants in the above-entitled cause, having offices at No. 261 Broadway, New York city. Since the closing of evidence in the above-entitled suit I have been retained in the interest of the defendants herein, and consequently had nothing whatever to do with the procurement of evidence or with the examination of witnesses therein.

Since the rendering — by his honor Judge Colt in the district of Massachusetts involving the same patent and the form of defendants herein I caused a careful search to be made with a view of discovering, if possible, "contrivances" containing the elements or factors in the same combination as specified in the second claim of the patent sued upon, being the only one said to be infringed by defendants; the search instituted as aforesaid resulted in the discovery of the patented contrivances to A. B. Shaw of 1867, G. B. Kirkham of 1876, Robert Geisler of 1880, and H. T. Robbins of 1867, all for umbrellas, and each containing precisely the same elements set forth in the claim referred to. Thus it appears (considered in the light of the said opinion of Judge Colt) that the supposed invention of Hall is found in the patents above enumerated and which

123 I am informed and verily believe were not known to defendants until long since the said opinion before referred to, and that such were not known to me with their combinations until since the granting of the injunction in this case.

JOHN DANE, JR.

Subscribed and sworn to before me this 11th day of May, 1888.

PATK DUNN,

[SEAL.] *Notary Public* (44), *N. Y. Co.*

And on the same day motion for rehearing was heard by the court and denied.

And on the 14th day of May, 1888, affidavit of John K. Beach was filed in the words and figures following, viz:

124 Circuit Court of the United States, District of Connecticut.

CHAS. A. MORSS *vs.* W. H. KNAPP *et al.* } In Equity. No. 538.

Affidavit of John K. Beach on Petition for a Rehearing.

John K. Beach, being duly sworn, deposes: I am of counsel for the defendants herein and also in another suit in equity brought by the same plaintiff against a customer of the defendants' in Boston, Mass., in which the record is the same. I prepared that case for trial, and in connection with Mr. Earle, the defendants' expert, had the entire charge of the defense. Diligent search was made into the prior state of the art and certain patents were joined and thought to be a sufficient defense against any broad construction of the patent and were referred to in the defendants' answer. The Massachusetts case was first tried and decided against the defendants, and the court in Connecticut held that the defendants herein were estopped to deny the validity or the infringement of the patent in suit. After the decision in Massachusetts Mr. Dane and myself determined to petition for a rehearing on the ground that the record disclosed an error of law, and I prepared a brief upon that point. Mr. Dane took general charge of the matter, and when in his office some weeks ago

I saw an umbrella which he handed to me and which was made according to the specification of the patent No. 70631, to A. B. Shaw. I never saw such an umbrella before, and never saw a copy of the Shaw patent until this morning, and did not know that such an umbrella or such a patent existed. It was not discovered by the defense in making the searches in the art to which I have referred and is a new and different defense from any which was known to me or offered by the defendants in the Massachusetts case.

125 The same thing is true of the Kirkham patent, which I never knew of or saw until to-day. I believe from an inspection of these two patents that they are material, and that if they had been presented to Judge Colt and considered by him he would not have decided the case as he did.

As to the oral testimony of the individuals referred to in the petition I have no knowledge whatsoever except that it is entirely new matter, none of the witnesses being known to me.

JOHN K. BEACH.

Subscribed and sworn to before me this 14th day of May, A. D. 1888.

FRANCIS G. BEACH,
Notary Public.

[SEAL.]

And on the same day motion for rehearing was again denied.

And on the 5th day of June, 1888, notice of motion for injunction against legal proceedings was filed by defendants in the words and figures following, viz:

126 Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS
vs.
W. H. KNAPP *et al.* } In Equity.

Notice of Motion to Enjoin Proceedings at Law and Dissolve Attachment.

To William A. Wright, Esq., solicitor for complainant:

Please take notice that on Tuesday, June 5th, 1888, at twelve o'clock, noon, or as soon thereafter as counsel can be heard, at circuit court room, at Hartford, Conn., I shall move the court for an injunction to restrain further proceedings at law in behalf of the complainant in respect of all matters at issue or which can be put in issue in this suit and to dissolve the attachment made in the suit of Charles A. Morss *vs.* W. H. Knapp *et al.*, at law, on the 30th day of May, 1888.

(Signed) JOHN K. BEACH,
Sol'r for Def'ts.

Jun- 4, 1888.

And on the same day defendants filed motion for injunction in the words and figures following, viz:

127 Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS
vs.
W. H. KNAPP *et al.* } In Equity.

Now comes the defendants and, by their counsel, apply to the court for an injunction to restrain the complainant herein from proceeding at law against the defendants in respect of matters at issue or which can be put in issue in this cause and for an order dissolving an attachment issued against the property of the defendants herein in a certain action at law brought by this complainant against these defendants for infringement of letters patent No. 233,240, being the letters patent in suit in this cause and filed in this court on the 27th day of May, 1888, said attachment being of the amount of $5,000 and having been laid upon the defendants' property on the 30th day of May, 1888.

And the defendants for cause therefor say that the issues raised by said action at law are issues of which this court as a court of equity has full power to dispose in this cause and that the complainant has had ample opportunity and still has opportunity to bring such issues before this court in this cause.

W. H. KNAPP ET AL.,
By JOHN K. BEACH,
Their Att'y.

And on the same day motion for injunction against legal proceedings was argued.

And on the 9th day of June, 1888, opinion of court was filed in the words and figures following, viz:

128 Circuit Court of the United States for the District of Connecticut.

CHARLES A. MORSS
vs.
WM. H. KNAPP *et al.*

SHIPMAN, *J.*:

This is a motion by the defendants in the above-entitled bill in equity to restrain the plaintiff therein from the further prosecution of a suit at law against the defendants.

In November, 1886, the plaintiff brought in this court a bill in equity against the defendant- praying for an injunction against the infringement of letters patent No. 233,240, and for an account.

An interlocutory decree in favor of the plaintiff, in which a perpetual injunction against said infringement and an accounting of damages and profit was ordered, was filed April 26th, 1888. The accounting has commenced and is now pending.

On May 29th, 1888, the plaintiff brought an action at law against the defendant to recover damages for the infringement of the same patent from April 26th, 1888, to May 28th, 1888, the damages being

laid at $5,000, and attached the property of the defendants in said suit.

The defendants now file a motion in the equity suit to restrain the plaintiff from the prosecution of said action at law.

The action was brought upon the ground that it was not feasible for the plaintiff to have an accounting for infringements which
129 have been committed since the decree, and if it was that the defendants' property is inadequate to pay the judgment that will be rendered.

The Supreme Court has said that in taking the account the master is not limited to the date of the decree, but in such cases "it is proper to extend the account down to the time of hearing before him unless the infringement ceased prior to that date." It is further said that "the practice saves a multiplicity of suits, time, and expense." (Rubber Co. *v.* Goodyear, 9 Wall., 788.) Tatham *v.* Lorober, 4 Blatchf., 86, is to the same effect, and I had supposed that such was the practice.

The law upon the subject of injunctions in pending bills in equity for an account to restrain suits at law subsequently brought for the same matter is that, after the plaintiff has obtained a decree to account and the proceedings upon said accounting are pending, the plaintiff is not permitted to proceed at law for the same matter without leave of the court. Mocher *v.* Reed, 1 Ball & B, 145; Bell *v.* O'Reilly, 2 Sch. & Lef., 430; Wedderburn *v.* Wedderburn, 2 Beav., 208; Phelps *v.* Prothers, 7 De G. McN. & G., 722; Kerr on Injunctions, 104; Story's Eq. Jur., sect. 889.

If the bill in equity is pending, the party can obtain an injunction by motion filed in that suit; otherwise when the decree has been fully executed. Ford *v.* Compton, 1 Cox, 296; Wedderburn *v.* Wedderburn, *supra;* Harrison *v.* Gurney, 2 Jac. & W., 563; 3 Daniell's Ch. Pl., 1720.

In this case the plaintiff can have an accounting, if he de-
130 sires, before the master for the infringements since the date of the decree, and can have an attachment for contempt if the infringements are obvious, and, without knowing more of the reasons which induced him to bring an action at law, I think that he should have confined himself to his remedy in equity, but the reasons may be adequate.

The motions are granted without prejudice to any special application which may be made by the plaintiff to bring an action at law upon a statement of the circumstances which he thinks justify such proceeding.

John K. Beach for the motion.

Wm. A. Wright and Chas. F. Perkins against the motion.

And on the 12th day of June, 1888, order for injunction was passed and filed in the words and figures following, viz:

131 United States Circuit Court, District of Connecticut.

CHARLES A. MORSS
vs.
WM. H. KNAPP *et al.* } In Equity.

On motion of John K. Beach, Esq., of counsel for defendants, and on arguments of counsel for both parties being heard, it is ordered that the complainant be, and hereby is, enjoined until further order of this court from proceeding at law against the defendants in respect of matters at issue and which can be put in issue before the master in the accounting already decreed and pending in this suit or from holding and retaining by process of attachment the property of the defendants in any action at law wherein Charles A. Morss is the plaintiff and the defendants, under the name of The Union Form Company, are defendants instituted and commenced since the 26th day of April, 1888, which is brought to recover damages heretofore incurred by the infringement by the defendants of the letters patent which are the subject of this bill in equity.

N. SHIPMAN,
District Judge.

And on the same day injunction issued out of court, directed to the said respondents, which was duly served and returned and which, with the return of service endorsed thereon, is in the words and figures following, viz:

132 [SEAL.] The President of the United States of America to Charles A. Morss, of Boston, Massachusetts, Greeting:

Whereas it has been represented to us in our circuit court of the United States for the second circuit and district of Connecticut, in equity, in a suit now pending in equity wherein you are the plaintiff and Charles L. Knapp, William H. Knapp, and Clinton I. Hague are the defendants, that you have instituted proceedings at law against the said defendant in respect of matters at issue or which can be put in issue before the master in the accounting already decreed and pending in said suit in equity, contrary to the rules and proceedure of this court:

Now, therefore, we do strictly command and enjoin you, the said Charles A. Morss, under the pains and penalties which may fall upon you in case of disobedience, that you do forthwith and absolutely and entirely desist from proceedings against the said Charles L. Knapp, William H. Knapp, and Clinton I. Hague at law, until further order of this court during the pendency of said suit in equity, in respect of matters which are at issue or can be put in issue before said master in said accounting now pending in said suit in equity.

Witness the Hon. Samuel F. Miller, senior associate justice of the Supreme Court of the United States, at Hartford, in the district of Connecticut, this 12th day of June, A. D. 1888.

E. E. MARVIN, *Clerk.*

UNITED STATES OF AMERICA, } ss:
District of Connecticut, }

NEW HAVEN, *June 13th*, 1888.

Then and there I left a true and attested copy of this warrant in the hands of William A. Wright, attorney for Charles A. Morss, the said Morss' residence being in the district of Massa-
133 chusetts.

Attest: NATHAN D. BATES,
U. S. Marshal,
By FRANK M. LOVEJOY,
His Deputy.

Fees.

Travel to serve, 2 m's	12
Service	2 00
Indorsements	25
Copy	50
Return to court, 37 m's	3 70
	$6 57

UNITED STATES OF AMERICA, } ss:
District of Connecticut, }

NEW HAVEN, *June 13th*, 1888.

Then and there I left a true and attested copy of this warrant in the hands of William A. Wright, one of the attorneys for said Charles A. Morss.

Attest: NATHAN D. BATES,
U. S. Marshal,
By FRANK M. LOVEJOY,
His Deputy.

Fees.

Travel, 2 m's at 6c.	12
Service	2 00
Copy	50
Indorsement	3 70
	$6 57

And on the 23rd day of August, 1888, complainant moved that defendant be directed to advance $500 on master's fees, and on the 24th day of August order denying motion was passed and filed in the words and figures following, viz:

134 MORSS } *vs.* KNAPP. }

The motion of the plaintiff to direct payment to the master on account of his fees and disbursements, to be made wholly or in part

by the defendant, pending the accounting is denied, reference being had to Macdonald *v.* Shepard, 10 Fed. Rep., 919, without prejudice to a renewal of the motion if new circumstances arise.

N. SHIPMAN,
District Judge.

And on the 12th day of October, 1888, motion for attachment for contempt was filed in the words and figures following, viz:

135 United States Circuit Court, District of Connecticut. In Equity.

Petition.

CHARLES A. MORSS
v.
WILLIAM H. KNAPP *et al.*

To the honorable the judges of said circuit court:

Charles A. Morss, complainant in the above-entitled cause, respectfully represents that William H. Knapp and Charles L. Knapp, the defendants herein, have been enjoined by this court from infringing the second claim of the letters patent granted to said Charles A. Morss, the complainant, set forth in the bill of complaint herein.

And your petitioner further represents that the defendants herein are defendants in fact in the suit of Morss *v.* The Domestic Sewing Machine Company, pending before the circuit court of the United States for the district of Massachusetts; that it was decreed on a motion for preliminary injunction in said suit, among other things, that the dress form herewith presented and marked Defendants' New-style Form is an infringement of the second claim of the patent in suit herein, and that the defendants herein were duly and promptly notified of the decree in said suit of Morss *v.* Domestic Sewing Machine Company.

And your petitioner represents that the said William H. Knapp and Charles L. Knapp have violated said injunction against them,
136 and have made, used, and sold to others to be used since the issue and service of said injunction, and since the issue and service of the injunction in said suit of Morss *v.* The Domestic Sewing Machine Company, and since receiving notice of the latter, a great number, but how many your petitioner cannot say, of dress forms embodying the contrivance set forth in the said letters patent and claimed in the second claim thereof.

And that said infringement has consisted in making, using, and selling dress forms substantially like the dress form herewith presented to the court and marked Defendants' New-style Form, being slightly different in construction from the dress form originally complained of in this suit, but embodying and employing essential infringements of said letters patent such as were formerly enjoined herein, and being a fac-simile of the form held to infringe in the said suit of Morss *v.* The Domestic Sewing Machine Company.

And your petitioner herewith presents affidavits of said infringement, and therefore prays that an attachment for said contempt may be issued against the said William H. Knapp and Charles L. Knapp to bring them before this honorable court and answer the said contempt.

And your petitioner will ever pray, etc.

CHARLES A. MORSS.

STATE OF MASSACHUSETTS, *Suffolk*, } *ss:*

BOSTON, *October 10th*, 1888.

Personally appeared the above-named Charles A. Morss and made oath to the foregoing petition by him subscribed before me.

CHARLES F. PERKINS,
Notary Public.

And on said day order to show cause was made and entered in said cause in the words and figures following, viz:

137 United States Circuit Court, District of Connecticut. In Equity.

CHARLES A. MORSS *vs.* WILLIAM H. KNAPP *et al.* } Order on Motion to Attach for Contempt.

Ordered by the circuit court of the United States for the district of Connecticut, on this 3rd day of December, A. D. 1888, upon the petition of Charles A. Morss and the affidavits filed in the clerk's office of this court on the 12th day of October last, and upon the certified copy of the affidavit of William H. Knapp upon a motion to attach the defendant for contempt in an action in the U. S. circuit court for the district of Massachusetts, between said Charles A. Morss complainant and The Domestic Sewing Machine Company, respondent, made in reply to the affidavits of said respondent, which certified copy was filed in the office of said clerk on the 12th day of October, 1888, and upon a certified copy of the affidavits, rescript, decree and injunction made, ordered and issued upon a motion for a preliminary injunction therein, in said last-named action, which certified copy was filed in the office of said clerk on the 12th day of October, 1888, that William H. Knapp and Charles L. Knapp, defendants in this cause, and each of them show cause before this court, at Hartford, on the 19th day of December, 1888, at 10 o'clock in the forenoon, why they, and each of them, should not be adjudged guilty of a contempt of the decrees and orders of this court in this cause, made on the 16th day of April, 1888, and on the 28th day of March, 1888, provided a copy of said petition, of said affidavits, of said certified copies and of this order be served on such of said defendants as can be found in this district on or before the 15th day of December, 1888.

N. SHIPMAN,
District Judge.

And on the same day affidavit of James Shepard was filed in the words and figures following, viz:

138 Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS
v.
W. H. KNAPP *et al.*

On motion for contempt.

Affidavit of James Shepard.

James Shepard, of New Britain, Conn., being duly sworn, deposes and says my name and residence is as aforesaid, I am fifty years of age, and by occupation I am a solicitor of patents, and have been so occupied for over twenty years last past. During the last fifteen years I have frequently each year been called upon to testify as an expert in causes appertaining to patents. I testified as an expert on behalf of the complainant in the case of Morss against Manchester and in the above-entitled cause. I am familiar with the subject of dress forms and with the Hall patent in suit.

I have carefully examined "Complainant's Exhibit New-style Form" and understand its construction and mode of operation, and I am requested to give my opinion as to whether or not it is substantially the same as the "Exhibit Defendants' Dress Form" in this cause and whether or not in like manner it embodies the combination shown and described in said patent and referred to in the second claim thereof.

139 This "Exhibit New-style Form" is for the lower part, or the skirt portion only of the form, and it was this portion of the "Exhibit Defendants' Dress Form" that was held to infringe said second claim. The ribs of this new-style form are made of wire instead of flat pieces of metal, but this is obviously an immaterial difference. The central standard of this exhibit is substantially the same, and so also are its double braces, while the collars or blocks and rests for holding and adjusting the braces upon the standard are the same as in the "Exhibit Defendants' Dress Form." While the braces are substantially the same there is the following immaterial difference:—one set of braces is a little shorter than the other and have their outer ends hinged to the longer braces and both sets of braces incline downwardly, but not in the same direction. They are always at different angles to the standard and form opposing sets of braces for supporting and adjusting the ribs of the skirt form. These double set of braces have precisely the same mode of operation as the double set of braces in the "Exhibit Defendants' Dress Form" and they perform the same function, in the combination, in the same way and by the same means. For these reasons, and in view of the decisions of the court in this cause and in the cause between the same parties in the district of Massachusetts, I am of the opinion that the "Complainant's Exhibit New-style Form"

fully and completely embodies the combination shown and described in the Hall patent in suit and particularly referred to in the second claim thereof, and the same combination as the skirt portion of the "Exhibit Defendants' Dress Form."

JAMES SHEPARD.

Subscribed and sworn to before me this eighth day of October, 1888.

LYMAN S. BURR,
Notary Public.

[SEAL.]

And on the same day affidavit of James Yerrington was filed in the words and figures following, viz:

140 I hereby certify that I am sixty-two years of age, that I am a resident of Chelsea, in the county of Suffolk and State of Massachusetts, that I am by occupation a stenographic court reporter, that I have been engaged in said occupation for eighteen years; that on the twenty-fifth day of September, 1888, I was present in the circuit court of the United States, in the district of Massachusetts, at the hearing of a motion in the cause of Morse *v.* Domestic Sewing Machine Company, and that the document hereto annexed marked "A" is a true and correct transcript of my notes taken at said hearing.

JAMES M. W. YERRINTON.

SUFFOLK, *ss:*

BOSTON, *October 3d*, 1888.

Personally appeared the above-named James M. W. Yerrington and made oath to the foregoing certificate by him subscribed.

Before me,

CHAS. F. PERKINS,
Notary Public.

141 "A."

Circuit Court of the United States, District of Massachusetts.

MORSS
v.
DOMESTIC SEWING MACHINE CO.

BOSTON, *Sept.* 25, 1888.

Mr. PERKINS. May it please your honor:—In the case of Morss *v.* Domestic Sewing Machine Co. the complainant moves for leave to file a replication. The time went by through inadvertence, which I need not explain now, and I should like to file it at the present time.

COLT, J. Is this argument likely to take some time?

Mr. DANE. I think not. I have two or three affidavits to read concerning the matter. I shall be very brief myself.

Of course it is proper for me to say at the outset that I shall object to the filing of the replication for several reasons. First, because of

the undue laches on the part of the plaintiffs in filing a replication. The complaint was filed in this case in January last. The appearance and answer were filed promptly, and over four months had elapsed without anything being done on the part of the plaintiffs in the way of filing their replication, and in the meantime other suits have been brought. The real defendants in this case is the firm of Knapp Brothers, or the Union Dress Form Co., of New Haven, Conn. There are at the present time three suits pending against them, one on the equity side and two on the law side, and proceedings are in progress, now nearly closed, by the master and
142 committee, who has been taking proofs, having accumulated a record up to this time, of about 347 pages of typewritten manuscript.

COLT, J. Where is that record?

Mr. DANE. In the district of Connecticut. On this accounting his honor Judge Shipman allowed the master and committee to take all the proofs necessary to go to the bottom of the case. Subsequently, or about the time (I cannot give the precise date), the complainants instituted the fourth suit, and his honor Judge Shipman refused to allow them to proceed with that. The opinion rendered on that hearing is found in the Federal Reporter, vol. 35, p. 218, in which it appears that, from his opinion, the Knapps being the real defendants——

COLT, J. That is a case, too, of Morss?

Mr. DANE. Yes, sir, of Morss, based on the same patent and the same claim. It is the second claim of the patent No. 233,240 of October 12, 1880. With your honor's permission, I will read from an affidavit.

COLT, J. Mr. Dane, you say that the bill in this case was filed in January last?

Mr. DANE. In January last.

COLT, J. Was the answer duly filed within the time?

Mr. DANE. It was; yes, sir.

COLT, J. I heard the motion, did I not, for a preliminary injunction in this case?

Mr. DANE. You did; yes, sir.

COLT, J. So that, so far as the main pleadings in the case are concerned, the record stands upon the bill and answer? It is simply the bill and answer?

Mr. DANE. As it stands to-day, simply the bill and answer; that is all.

COLT, J. Now the plaintiffs desire to file a replication. What is the date of the filing of the answer?

Mr. PERKINS. It is April 2d.

Mr. DANE. It was about the 24th or 27th of January when the bill was filed. Appearance was filed at the next rules, after, of course, the thirty days after the twenty days before service. A replication should have been filed not later than the May rule. Of course it was proper for our adversaries to have filed their
143 replication. They could have done it the next day, they could have done it the same day, but they failed to do it;

and your honor will recollect that at the hearing upon the motion for a preliminary injunction reference was made to it. But, notwithstanding that fact, they have failed to file their replication, and probably would never have filed it had it not been for my notice of a motion to dismiss.

COLT, J. When did you first move in the matter, Mr. Dane?

Mr. DANE. I moved in June last first, and the papers are on file with the clerk.

COLT, J. Did you endeavor to speed the cause at that time by calling upon the plaintiffs to file their replication in any way?

Mr. DANE. I will tell you. At about the same time a suit was instituted in the eastern district of New York against Henry Bristow for selling dress forms, which suit was based on the same patent. I appeared for Henry Bristow. In that case, also, the time for filing the replication was allowed to pass. Thereupon, at the request of Mr. Bristow, I wrote my friend, Mr. Perkins, that unless he filed his replication, I should proceed to dismiss. Later he sent his replication; I endorsed it and filed it. We waited until into June. That suit was instituted at the same time with the suit against the Domestic Sewing Machine Co. We waited until the latter part of June, and no movement whatever had been made on the part of the plaintiff. We then gave notice of our intention to proceed to take proofs in the case.

COLT, J. When did you give your notice of that, Mr. Dane?

Mr. DANE. In June.

Mr. PERKINS. That was in the Brooklyn case?

Mr. DANE. Yes, the Brooklyn case. That is what I say. That was the Brooklyn case, on the same patent, the same claim. We proceeded to take proofs. We adjourned it at once at the request of Mr. Perkins, the complainants' counsel, and at the second session we proceeded, closed the proofs, and filed our papers, and the complainants have not taken any testimony at all. The case is on the calendar for final hearing. The Connecticut cases would probably have been closed by this time had it not been for the fact that Mr. Marvin, who is clerk of the court for the district of Connecticut, who was acting as master and committee, was detained because of the session of the court now being held there; but he says that he will be ready to go on about the 27th. Am I right, Mr. Perkins?

144 Mr. PERKINS. Thursday.

Mr. DANE. That is the 26th or 27th, when, so far as we understand it, the proofs will probably all be in in those cases, and a hearing may be had on this record in that court, where the real defendants, the manufacturers, have these several suits pending against them; and to permit the filing of the replication at this date, under these circumstances, would subject the real defendants to unnecessary cost and hardship, because of the fact that the proofs are so voluminous, and it has taken so long a time in order to take the proofs that we now have, that it would seem as if——

COLT, J. Do the Connecticut and Brooklyn suits and the other suits involve the same questions?

Mr. DANE. The same questions precisely; the same claims and the

same questions, and it embodies all that has been done by any of the defendants that have been sued.

COLT, J. Is the Domestic Sewing Machine Co. the defendant in this case, or a mere nominal defendant?

Mr. DANE. A mere nominal defendant, that is all. I have affidavits here, if your honor would like to hear them, that will give you the facts under oath.

COLT, J. What is the purport of your affidavits? Do they go to show that the issues are the same in all these cases?

Mr. DANE: Yes.

COLT, J. Do you admit that, Mr. Perkins?

Mr. PERKINS. That they are the same issues?

COLT, J. Yes.

Mr. PERKINS. Not entirely, your honor.

COLT, J. Well, Mr. Dane, why should I not allow this replication to be filed? Your answer was not filed until the 2d of April, and meantime there has been a motion for a preliminary injunction that has been heard, and perhaps naturally the parties would not go on and speed the cause very much until that motion was disposed of. Of course the motion was granted. But taking the general practice in equity causes, and the fact that neither counsel holds the other very strictly to the rules unless the matter is brought to the attention of the court, or one side or the other endeavors to speed the cause; but if the matter is not brought to the attention of the court, and the counsel do not undertake to speed the cause in any way,
145 it seems to me it has been generally customary, unless the laches are very great, to allow the other side to file their replication. In this state of the record I do not see any very great degree of laches on their part.

Mr. PERKINS. If your honor will allow me to say just one word. The subpœna was returnable at the March rules; the answer was filed on the 2d day of April. In March I saw Mr. Dane in New York, and he told me that he would not be able to have his answer ready in time, and asked me if I would give him an extension of time. I said, "You may file your answer whenever you choose." I did not know that the answer was filed, had no notice of it, until the 10th day of May, which was three days after the replication was due. On the 10th day of May I drew my replication, sent it to Mr. Dane and asked him to assent to the filing. I could have placed it on the files of the court and it would have been accepted, as I have been informed since. I also sent on one in the Bristow case. He filed the one in the Bristow case, but made no reply to my request in this case. I wrote him another letter and received no reply; but when we had our hearing in Providence, on May 29th, he said that this replication might be filed, and not until the 2d day of July did he file any motion to dismiss this bill. I prepared my replication as soon after as I could. It was some little time after I had been to Mr. Dane and he had made the statement——

Mr. DANE. I beg your pardon. I did not make the statement as you have made it. I simply said if you filed your replication then, I would not oppose it. That is all I said,—the very words. I can

produce at least three affidavits in support of that, because I was very guarded about that.

Mr. PERKINS. Well, whatever your statement may have been, I think I have done everything I could to get the replication on file, under the circumstances, considering it a merely formal matter, which amounts to nothing.

Mr. DANE. It is evident from what has been done in the past and the way they have managed their cases in the various districts in other circuits, that they have not been conducted in a spirit of fairness. They have not met the questions fairly and in the best possible way; not at all. It has been managed for the purpose solely of harassing and annoying the defendants, rather than to have the case proceed on its merits.

146 Mr. PERKINS. Mr. Dane, I shall not submit to any such statement as that.

COLT, J. The motion for a preliminary injunction was pressed by the plaintiffs; the motion was heard, and the court decided in their favor. So far as my knowledge of the case is concerned, I have not noticed any disposition on the part of the plaintiffs here except to obtain what they believe to be their rights.

Mr. DANE. Conceding that for a moment, should they not in justice to the defendants, go on and make out their case, instead of letting the defendants be kept under restraint, without giving them an opportunity to go on? Now, in June I appeared here and moved to have the case dismissed.

Mr. PERKINS. The 2d of July, Mr. Dane, allow me to say.

Mr. DANE. Well, it was about that time. I know the papers were drawn in June, at all events. I will say that it was the 2d of July. But owing to the fact that the motion was then in the hands of your honor, I did not press it, and it was because of suggestions made to me at the time that I did not. I felt that that was my right then under the 66th rule. We waited until later on, and no replication in the meantime had been offered, and we waited until the September rules and then moved to dismiss under the 66th rule. Nothing up to that time had been done. Not a word had been said by my adversaries concerning the matter; yet we were engaged in this case most of the summer.

COLT, J. I understand Mr. Perkins to say, Mr. Dane, that after your motion to dismiss was filed, about the first of July, he endeavored to file the replication.

Mr. DANE. That is a mistake.

Mr. PERKINS. Yes, I left it with the clerk, and the clerk informed me——

COLT, J. What date was that?

Mr. STETSON. It was received August 6, 1888.

Mr. PERKINS. The clerk, Mr. Trowbridge, told me that he notified Mr. Dane that the replication had been left in the office.

Mr. DANE. I never have received any such letter. I am prepared to show all the letters that I have received from the clerk's office of this court.

COLT, J. I will hear Mr. Dane through.

147 Mr. DANE. In order to be as brief as possible I will read from the affidavits which I have and then I shall leave the case with the court.

(Mr. Dane read a part of the affidavit of W. H. Knapp.)

COLT, J. Mr. Dane, I do not think at this time I should go into the question as to whether the issues in these cases are the same or not. I understand the other side to take the position that the issue in this case is somewhat different from the issues in the others. I understood Mr. Perkins to say so.

Mr. DANE. If that is so I will submit without another word; but I say no.

COLT, J. As to the filing of this replication, it seems to me clear, on the practice as adopted in this circuit, that the plaintiffs in this case ought to be allowed to file their replication. This is the first time that this matter has been brought to the attention of the court, and I think that all you are entitled to, under the circumstances of the case, is to have the evidence speeded as rapidly as possible. But to dimiss this bill under these circumstances, when there was a motion for a preliminary injunction pending, when the answer was not filed until April 2d, when this matter of replication has been brought to your attention and you brought it to the attention of the plaintiffs before, and when they apparently offer a good excuse for not filing it,—it would certainly seem to me to be contrary to equity and good conscience to send these complainants out of court under these circumstances. And I do not think that I am called upon to examine now, at this stage of this case, into the question whether the issues are identical here with those in the cases in other States, and therefore I am strongly disposed to allow these complainants to file their replication as of the June rule, and to hold them, if that is the date, *nunc pro tunc*.

Mr. STETSON. That will cut them off from taking evidence under the three months' rule.

COLT, J. Very well; let them file their replication to-day. Now, if you desire, Mr. Dane, to have them held strictly to the rule for the taking of testimony, etc., I will give you any advantage of that kind.

Mr. DANE. Now I have two cases, one a decision by Judge Treat, and also the case of Spaulding *v.* Page. In that case (4 Fisher, 649) the court said:

148 "Where a patentee does not use the patented machine himself, has not established a patent, but manufactures the patented article and sells at fixed prices, seeking his compensation in the profits of the manufacture and sale at such fixed prices, and another party infringes the patent by making and selling the patented article; and where the patentee sues the party so infringing, and claims to recover and does recover the full amount of profits which he himself would have obtained on said articles had he manufactured and sold them at his ordinary prices, by such claim and recovery he adopts the sale made by the party infringing, and the

right to use the specific articles so sold, and for which the recovery has been had, vests in the purchaser."

That is our case, exactly our case. The Domestic Sewing Machine Co. does not manufacture anything, never has done so, although they are the oldest dealers, probably, in the country in dress forms. In the case before Judge Treat where the replication, due under the October rules, was not filed, a motion to dismiss was made by the defendant on the 3d of December following; whereupon the defendant filed his replication, or offered to. Yet the court sustained the motion to dismiss.

Now, as the matter stands on the injunction, if the manufacturers, who are the real defendants, are estopped from the manufacture under the restraining order of this court, that is the end of it. They cannot do anything so far as manufacturing or selling the article that is embraced in the restraining order; and if on the final disposition of the case it is found that the articles made by them were infringements, of course that is the end of it and that disposes of the entire question.

COLT, J. The replication may be filed.

Mr. DANE. Well, I shall ask your honor to cause them to file bonds. The defendant is not a resident of this Commonwealth, it is a foreign corporation.

COLT, J. Is the Domestic Sewing Machine Co. a foreign corporation?

Mr. DANE. It is a corporation organized and existing under the laws of the State of Ohio. We shall ask, not a large amount, but we will say $10,000. Now, after having been subjected to this botheration, under all the circumstances I think we are justly entitled to a bond.

149 COLT, J. Where do you get your authority, on the practice in this circuit, for the plaintiffs under such circumstances to be required to give a bond in that amount? I must confess, Mr. Dane, that so far as the conduct of this suit is concerned, its harassing nature, and all that, it seems to me to be like all patent cases. We have gone along in the usual way. The suit was not brought until January; the answer was filed in April; the motion for a preliminary injunction was brought up, speedily heard and decided. I do not see, so far as what has taken place in this case has come to the knowledge of the court, that there is any just cause for any reflection upon the plaintiffs in any way. They have brought their suit and the court decided upon the motion for a preliminary injunction that it had merits in it and gave them a decree in their favor. Now, to call upon them to give bonds and seek, under these circumstances, to drive them out of court because they have not filed their replication during the summer months, when the court and counsel are expected to be away most of the time, seems to me to be going too far. No, the replication may be filed and three months allowed for taking the testimony in the case.

Mr. DANE. There is another matter, Mr. Perkins, which, while we are here, I would like to have understood, and that is, when these motions for attachment can be heard. There is a motion before

this court for an attachment against the defendants for an alleged contempt.

COLT, J. Where do you want to have it heard? At Providence or here?

Mr. PERKINS. Anywhere that will suit your honor.

COLT, J. When will you be ready for a hearing, Mr. Dane?

Mr. DANE. I am ready this morning.

COLT, J. I cannot hear it this morning. I have a case assigned. Mr. Clarke has been waiting for some time.

Mr. PERKINS. The defendants' counter-affidavits were not in until yesterday. We have not had time to reply to them. The rebutting affidavits are not in yet. They will be ready in a few days and then we shall be ready to go right on.

COLT, J. When your affidavits are filed, if you will notify Mr. Stetson I will assign an early day for a hearing, either here or in Providence.

And on the same day affidavit of Frank H. Moffet was filed in the words and figures following, viz:

150 Circuit Court of the United States, District of Connecticut.
In Equity.

CHAS. A. MORSS
v.
WM. H. KNAPP.

Affidavit of Frank H. Moffet.

I, Frank H. Moffet, on oath depose and say, that I am 20 years of age, and reside in the city of New York; that I know William H. Knapp, one of the defendants in this case, and who is a member of the firm of Knapp Bros. who are carrying on business at 52 Fulton street in said city. On the fifteenth day of September current I bought for R. D. Andrews, my employer, at the said place of business of Knapp Bros., three skirt forms, one of which is herewith exhibited and to which I have attached a tag bearing upon it in my own handwriting the words: "Circuit court of the United States, district of Connecticut, in equity, Complainant's Exhibit New-style Form, attest: Frank H. Moffet." Said William H. Knapp personally received and filled my order for said skirt forms, and personally received the payment therefor, which was six dollars; he also gave to me at the same time, a receipted bill for said skirt forms, which I saw him personally sign with the firm name, which receipt is hereto annexed and marked "A." Said William H. Knapp at the time of said purchase gave to me two circulars or cards, which I hereto annex and mark "B" and "C" respectively.

The Exhibit "New-style Form" herein referred to is the
151 "folding draping stand" mentioned in the Exhibit Card "B," and which until recently has been sold at a higher price than that for which they were sold to me.

The Domestic Sewing Machine Company has until recently been the sole or principal selling agents of the skirt forms like the Exhibit "New-style Form," which have always been manufactured by said William H. Knapp and his business associates, who formerly did business in the city of New York, under the name of Knapp & Hague, and in New Haven, Conn., under the style or firm name of the Union Form Company. In the box in which said Exhibit "New-style Form" was packed, when it was delivered, there was a circular which is hereto annexed and marked "D." I had some conversation with said William H. Knapp at the time of the purchase of said skirt form, in which he stated that the injunction against the Domestic Sewing Machine Company did not apply to him personally, and that he should continue to carry on the dress-form business as before, and that he had reduced the price on the skirt forms for the purpose of driving out the Hall forms.

Dated this 21st day of September, 1888.

FRANK H. MOFFET.

STATE, COUNTY AND CITY OF NEW YORK:

September twenty-first, eighteen hundred and eighty-eight, personally appeared before me the above-named Frank H. Moffet, and made oath to the truth of the foregoing affidavit, by him subscribed.

JOHN W. RIPLEY,
Notary Public, N. Y. Co.

152 "A"

All claims for deduction must be made on receipt of goods. Prices and terms subject to change without notice.

NEW YORK, *Sept.* 15, 1888.

Mr. R. D. Andrews,

Bought of Knapp Brothers,
Commission merchants,

The Wight Wire Cloth Co.
Union Form Co.

Terms

52 Fulton street.

3 folding draping stands $6 00

Rec. pay't,
KNAPP BROS.

Shipped by

"B"

NEW YORK, *Sept.* 1*st*, 1888.

DEAR SIR: We beg to call your attention to our folding draping stand, which until recently has been handled by the Domestic Sewing Machine Company.

This stand occupies a smaller box, is easier to operate, finished better and more durable than any draping stand in the market, and has the measuring tapes.

The following prices should be examined in connection with the stand, sample of which will be expressed for your inspection and operation.

In lots of 5 dozen		$18 00	per dozen.
" " 2 "		21 00	" "
" " 1 "	more or less	24 00	" "

Respectfully,

KNAPP BROTHERS,
No. 52 Fulton Street.

153 "C"

Dissolution of Copartnership.

The copartnership heretofore existing between the undersigned, who have been doing business in New York city, under the firm — of Knapp & Hague, and in New Haven, Conn., under the firm name of Union Form Company, is by consent dissolved. All persons indebted to the late firms will make payment to the Knapp Brothers, at New York city, and to the Union Form Company, Knapp Brothers, proprietors, at New Haven, Conn., as all interest of the said Clinton I. Hague, in said claims has been assigned to the said Knapp Brothers. All indebtedness of the old firms will be paid by the Knapp Brothers.

CHARLES L. KNAPP.
WILLIAM H. KNAPP.
CLINTON I. HAGUE.

New Firm.

We have this day purchased the interest of Clinton I. Hague, and will continue business at No. 52 Fulton street, New York city, under the name of Knapp Brothers, and at Nos. 129 and 131 Park street, New Haven, Conn., under the name of Knapp Brothers, proprietors. We thank our patrons for past favors and hope for a continuance of the same.

CHARLES L. KNAPP.
WILLIAM H. KNAPP.

New York city, August 1st, 1888.

154 *"D"*

"Domestic" Sewing Machine Co.,

BROADWAY AND 14TH STREET, NEW YORK.

To whom all communications concerning agencies in the U. S. should be addressed.

"The 'Domestic' Adjustable Dress and Skirt Forms."

(KNAPP PATENT.)

THE "DOMESTIC" DRESS FORM.

PAPIER MACHE. (ADJUSTABLE.)

[ILLUSTRATION.]

This full sized form is made with SKIRT of tinned wire, and BODY of PAPIER MACHE, either of which, regulated by its perfect adjusting devices independently of the other enables the user to secure the most finished results in shaping and fitting. It is a *perfect form* in all respects and cannot fail to be a great help either in the modiste's workroom or the family. The body is well padded, is heavily covered and affords *good holding surface for pins* in *fitting*, workmanship strong and durable, and general appearance finished and attractive. Mounted on castors. *No extra charge for crating.*

TO ADJUST.

The lower knob at the top of the form turns to adjust the neck and bust, and the upper knob regulates the waist and skirt in the same way to the following extremes of size and inclusive:

Neck, 12 inches to 21 inches.
Bust, 34 " " 43 "
Waist, 20 " " 30 "

The whole form is 56½ inches high, and can be elevated to any desired height up to 65 inches by raising the figure and then tightening the thumb screw on the centre rod. This height enables the user to sit at the work. The body is 16½ inches high and the skirt 30 inches long.

☞ An adjustable form of the same dimensions and made of wire in both body and skirt, can be furnished if desired. In ordering always state whether *Papier Mache* or *Wire* is desired.

Ladies can save themselves much tedious standing by the use of these Forms, either as models for themselves or in working upon the garments of others.

THE "DOMESTIC" SKIRT FORM.

(ADJUSTABLE.)

This full sized, tinned wire skirt form is easily adjustable, of shapely design and is so low in price as to meet the popular demand. It is indispensible for draping, trimming and rearranging Dress Skirts. Of excellent workmanship and well finished. Mounted on castors. *No extra charge for crating.*

TO ADJUST.

The head turns to regulate the skirt to the following extremes of size and inclusive:

Waist, 20 inches to 30 inches.
Hips, 38 " " 47 "

The skirt is 40 inches high, and can be elevated to any desired height up to 55 inches by raising the figure and then tightening the thumb-screw on the centre rod. This height enables the user to sit at the work.

Length of skirt 30 inches.

[ILLUSTRATION.]

155

THE "DOMESTIC" FOLDING SKIRT FORMS

(ADJUSTABLE)

[ILLUSTRATION.]

THESE are made of tinned wire, having a folding base of new design and can be gathered into such compact form as to be easily carried about. Form No. 1, when folded, goes into a box three inches square and thirty-five inches long, while the box for the No. 2 is three inches square and but twenty-three inches long. These forms can be used for the smallest misses' as well as the very largest ladies' skirts. The movement for adjusting is strong, simple and very quick in action. Their durability and extreme simplicity recommend them at a glance.

The No. 2 is shorter in the skirt than the No. 1 and lower in price. It is especially adapted for dressmakers' use in visiting their customers, or where there is any occasion for a very compact form. It can easily be packed in a trunk. No. 1 is as compact in circumference and will go into the larger traveling trunks, being but twelve inches longer than No. 2. Either of these forms, when not in actual use in dressmaking, can be used to hold fine or laundered shirts.

[ILLUSTRATION.]

To Adjust No. 1.—The lower knob turns to expand or contract the hips, and the upper knob acts likewise upon the lower portion of the form. The waist is adjusted by the band. The feet are set for use by allowing them to drop and screwing the center rod down into the block. Reverse the operation to fold the foot.

The No. 2 is Adjusted by the knob at the top. The feet are the same as those of No. 1 and are set in the same manner.

No. 1. **No. 2.**

And on the same day affidavit of Ruel R. Appleton was filed in the words and figures following, viz:

156 Circuit Court of the United States, District of Connecticut.
In Equity.

CHARLES A. MORSS }
v.
WM. H. KNAPP. }

I, Ruel R. Appleton of Brooklyn, New York, on oath depose and say, that I am thirty-five years of age and engaged in the business of selling dress forms in the city of New York. On the 10th day of September current I had a conversation with William H. Knapp, one of the defendants in this case, concerning the injunction against the Domestic Sewing Machine Company in a suit in the circuit court of the United States for the district of Massachusetts, against said company for the infringement of letters patent by selling dress forms manufactured by said Knapp and his associates, who have been until recently carrying on business under the name of the Union Form Company. Said Knapp stated in said conversation that the injunction against the Domestic Sewing Machine Company did not apply to him personally, and that he should continue to prosecute the business himself; that he had reduced the price of his

folding skirt forms to $18 per dozen, and intended to advertise it extensively and push the sale of his goods. Since that time several dealers in dress forms have shown to me a circular card like the one marked "B" and annexed to the affidavit of Frank H. Moffet
157 in this case. I am informed and believe that said circular card has been extensively circulated by said William H. Knapp, through the dress-form trade, and I am informed and believe that he has sold extensively since the injunction which is issued against the Domestic Sewing Machine Company, of the skirt forms like the Exhibit "New-style Form," referred to in the affidavit of said Moffet and called "the folding draping stand" in the circular card marked "B" hereinbefore referred to.

Dated this 21 day of September, 1888.

RUEL R. APPLETON.

STATE, COUNTY AND CITY OF NEW YORK:

September twenty-first, eighteen hundred and eighty-eight, personally appeared before me the above-named Ruel R. Appleton, and made oath to the truth of the foregoing affidavit, by him subscribed.

JOHN W. RIPLEY,
Notary Public, N. Y. Co.

158 Circuit Court of the United States, District of Connecticut.
In Equity.

CHARLES A. MORSS
v.
WM. H. KNAPP *et al.*

Affidavit of Ruel R. Appleton.

I, Ruel R. Appleton, of New York city, New York, on oath depose and say, that I am thirty-five years of age; I am by occupation the New York agent of the Hall's Bazar Form Company; I saw in the advance sheet of the Ladies' Home Journal, November number of the current year, published by the Custer Publishing Company, Philadelphia, Penn., the advertisement hereto annexed marked "A," which I cut from said advance sheet of said journal and hereto annexed. I am informed and believe that the November issue of said journal containing said advertisement will reach seven hundred and fifty thousand (750,000) copies.

RUEL R. APPLETON.

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

Subscribed and sworn to before me, this tenth day of October, 1888.

JOHN W. RIPLEY,
Notary Public, N. Y. Co.

159 "A."

On receipt of $2.50 will send you, express paid, a

Knapp's

Patent Folding Draping Stand.

These are made of tinned wire, having a folding base of new design and can be gathered into such compact form as to be easily carried about. When folded, goes into a box (CUT.) 3 inches square and 35 inches long. These forms can be used for the smallest misses' as well as the very largest ladies' skirts. The movement for adjusting is strong, simple and very quick of action. Their durability and extreme simplicity recommend them at a glance.

Every form guaranteed.

UNION FORM COMPANY,
No. 52 Fulton St., New York City.

And on the same day affidavit of John A. Coleman was filed in the words and figures following, viz:

160 Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS
v.
WILLIAM H. KNAPP *et al.* } No. —.

Affidavit of John A. Coleman.

I, John A. Coleman, of Providence, in the State of Rhode Island, on oath depose and say that I am 49 years of age, and that I am by profession a mechanical engineer and expert. During the past sixteen years I have frequently testified as a mechanical expert in suits in the circuit court of the United States for the infringement of letters patent.

I have been requested by the counsel for the complainant in the above-entitled case to compare the Exhibit New-style Form with the combination of the second claim of the letters patent in suit herein. I have had occasion several times before to study said letters patent, and I am thoroughly familiar with the same. I have carefully examined the said exhibit.

The structure contemplated by the complainant's patent is a skeletonized counterfeit of the draped female form which may be expanded or contracted to the varying dimensions of small or large persons, and is employed for the purposes of arranging drapery thereon. It is apparent that one of the first requisites in a form, to represent by itself alone, the dimensions of both thin and large persons, is 161 that the form should expand at all points in substantially the same ratio; for example, if in a skirt form the waist is to be expanded, there should exist the capacity for the bottom of the skirt

to be expanded likewise; or if the entire human form, instead of the skirt portion only, was to be represented in one structure, and drapery was to be arranged over the bust as well as the skirt, then a change of the form from the dimensions of a thin person to those of a stout person must be made, by expanding both the bust and skirt portions in a substantially equal degree from the centre of the structure. Therefore, it is apparent that whatever the configuration of the ribs may be, which are employed to give the outline of the draped human figure, they must have a movement which permits them to be always maintained in substantial parallelism with the central standard. This is in direct contradistinction to the principle existing in an umbrella, in which no parallelism of the outer ribs with its centre is possible, when the ribs are expanded. This is because one end of every rib is permanently attached to the central member, or stick, of the structure, and therefore, cannot be expanded; while the opposite ends of the ribs are left free and can be drawn toward or pushed from the centre to give the required form to the umbrella. Taking a Japanese umbrella as the best illustration of the principle, the ribs being held fast on the stick at their upper ends, when expanded below, form a flattened cone.

There is nothing in the structure of an umbrella which would enable parallelism of the outward form with the stick to be obtained. A new conception was necessary in order to make a dress form and new ingredients had to be invented and supplied beyond any mechanism found in an umbrella. Ribs had to be invented which should counterfeit the shape of the human form, and these ribs had to be conceived of as in a certain sense entirely independent members from the double braces. These ribs of a dress form whatever may be their configuration must at all times hang substantially parallel with the central stick, whether drawn toward the stick to make a form of small diameter, or pushed radially away from it to make a form of increased diameter. If the bottoms of the ribs are to be expanded, the tops of the ribs must be expanded likewise, consequently to accomplish this expansion at all points of the form, the ribs of the dress form require to be jointedly attached to the outer ends of the
162 double braces, and to hang pendulously therefrom. It will be seen by this arrangement, that the ribs confined at only one point, would hang freely down from this point; namely, from the outward ends of the double braces, and would approach and recede from the central stick in substantial parallelism with the stick, when the inner ends of the double braces are moved toward or from each other on the standard. I find that there is an essential difference between the device of the complainant's patent and all the devices which I have heretofore known for the purpose of shaping garments of any kind, in that the device of the patent possesses a structure which as an entirety is expansible radially in all directions from a common centre, and thereby preserves the symmetry of the form, whatever its diameter may be; whereas in the other devices shown in the record in this case, such as the Wilson, which is designed to support a hoopskirt, and the Franke patents, which are designed to support coats and pantaloons, the form is divided into

halves, and one-half is pulled away from the other, thereby increasing the diameter in one way only, which construction and operation in a dress form would destroy its symmetry and deprive it of its chief value. I do not consider that the patent to Balch for a reel has any relation whatever to the art to which the device of the complainant's patent belongs, because the chief ingredient of the device of the complainant's patent, namely, a structure capable of imparting its form to the fabric placed upon it, is entirely wanting. There is nothing in it to suggest the invention of the complainant's patent. I do not find in any of the prior patents referred to by the defendants' expert, a device having a structure designed to impart its form to something else, which structure as an entirety is capable of radial adjustments in all directions from a common centre. The complainant's patent shows two series of braces opposed to each other, which are called double braces, and upon which the form is suspended. Upon these double braces depends the chief value of the device.

To be more clear in what is meant by double braces, they must be braces which oppose or act against each other,—they may both incline upwardly or both downwardly so long as they are not parallel to each other.

The second claim of the complainant's patent sets forth a combination of five elements, consisting—

163 First, of a "standard," which is an ordinary post.

Second, of "ribs," which surround the standard and constitute a skirt structure to impart its shape to the dress.

Third, of "double braces," the office of which I have heretofore fully explained.

Fourth, of "slides" or collars, to which the inner ends of the braces are attached and permit them to be revolved about the standard.

Fifth, of "rests," which are set collars, and are designed to regulate and fix the distance between the inner ends of the braces.

The Exhibit New-style Form has an ordinary post or standard, precisely like the complainant's standard; a series of ribs surrounding the standard and constituting a skirt form, which are substantially the same in operation and effect as the ribs of the complainant's patent, differing only in design. The exhibit has collars to which the inner ends of the braces are attached, which may be revolved about the standard, and are substantially the same in operation and effect as the "slides" of the complainant's patent, and they are also duplicates of the collars held by the court in this case to be the equivalents of said slides. The exhibit has another collar above the upper slide, which is fixed against vertical movement, and also has a thread cut on the standard which operates the lower collar or nut. The fixed collar above, and the screw-thread below the two slides, serve to regulate and fix the distance between the inner ends of the double braces. They are substantially the same in operation and effect as the "rests" of the complainant's patent. This fixed collar and screw-thread are the exact duplicates of the fixed collar and screw-thread held by the court in this case to be the equivalents

of the "rest" of the complainant's patent. The double braces also, clearly exist in the said exhibit. There is at the hip portion, two sets of braces inclining at different angles from the standard, converging towards each other, and connected to each other and to the skirt structure. These braces oppose each other so that the skirt cannot be contracted without changing the distance between the inner ends of the braces. These are combined and arranged so as to perform the essential function of the double braces of the complainant's patent, namely, to prevent the outer ends of each other from moving towards or away from the standard, without changing the distance between their inner ends.

164 I am, therefore, clearly of the opinion that the Exhibit New-style Form, contains the combination of the second claim of the complainant's patent, and that there is no substantial difference between the said exhibit, and the skirt portion of the Exhibit Defendants' Dress Form, held by the court in this case to infringe the said second claim of the complainant's patent.

Dated this 10th day of October, A. D. 1888.

JOHN A. COLEMAN.

SUFFOLK, *ss:*

OCTOBER 10TH, 1888.

Sworn to and subscribed before me this tenth day of October, 1888.

CHARLES F. PERKINS,
Notary Public.

And on the same day affidavit of John B. Shorter was filed in the words and figures following, viz:

165 Circuit Court of the United States, District of Connecticut.
In Equity.

CHARLES A. MORSS
v.
WILLIAM H. KNAPP.

Affidavit of John B. Shorter.

I, John B. Shorter, of Brooklyn, N. Y., on oath depose and say, that I am 27 years of age; I am by occupation a traveling salesman for the Hall Bazar Form Company. During the last four weeks I have been traveling through New England soliciting orders for dress forms, and have visited a great number of dealers. I learned from almost all the dealers whom I visited that they had recently received circulars like the one hereto annexed and marked "A." I am informed, and believe, that this circular was sent to all the dress-form dealers throughout New England by the defendants in this case, who are carrying on business at 52 Fulton street in the city of New York, and who formerly carried on business under the name of the Union Form Company, of New Haven, Connecticut.

J. B. SHORTER.

Dated this 28th day of September, 1888.

STATE, COUNTY, AND CITY OF NEW YORK:

Subscribed and sworn to before me,

JOHN W. RIPLEY,
Notary Public

166 "A."

NEW YORK, *Sept. 1st*, 1888.

DEAR SIR: We beg leave to call your attention to our folding draping stand, which until recently has been handled by the Domestic Sewing Machine Company.

This stand occupies a smaller box, is easier to operate, finished better and more durable than any draping stand in the market, and has the measuring tapes.

The following prices should be examined in connection with the stand, sample of which will be expressed for your inspection and operation:

In lots of 5 dozen	$18 00	per dozen.
" " 2 "	21 00	"
" " 1 " or less	24 00	"

Respectfully,

KNAPP BROTHERS,
No. 52 Fulton Street.

And on the same day affidavit of Charles S. Gooding was filed in the words and figures following, viz:

167 Circuit Court of the United States, District of Connecticut.
In Equity.

CHARLES A. MORSS
v.
WM. H. KNAPP *et al.*

Affidavit of Charles S. Gooding.

I, Charles S. Gooding, of Brookline, Massachusetts, on oath depose and say, that I am 30 years of age, and am a mechanical engineer and expert. I am a graduate of the Institute of Technology, and have been engaged for the past eight years in making mechanical drawings and superintending the construction of machinery, in the course of which I have had considerable experience in studying the specifications and claims of letters patent. I have also been called a number of times to testify as a mechanical expert in suits for infringement of letters patent before the United States courts. I have also carefully read and fully understand the specifications and drawings of letters patent 233,240, upon which this suit was brought, and have examined especially the second claim of said patent, and understand the invention therein set forth. The device of said claim consists of a combination of parts, among which is enumerated double braces e^2 e^2. Upon reference to the drawings of the patent, I find said braces to

consist of two sets of arms extending at different angles from the standard and connected together and to the skirt form by means of a link or block. In the drawings of the patent the two sets
168 are shown extending from directly opposite angles to each other, but that is not at all essential to their operation and object. I find in the Exhibit New-style Form the combination of the said second claim of said letters patent. This exhibit does not differ substantially from the skirt portion of the Exhibit Defendants' Dress Form, which was found by this court to contain said combination and to infringe said letters patent. There is a formal difference in the construction of the ribs and in that difference they are specifically more like the ribs shown in the drawings of said letters patent than like those of the said Exhibit Defendants' Dress Form. Also, the angle at which the lower set of braces is arranged with reference to the standard in the Exhibit New-style Form differs from that in the said Defendants' Dress Form, and the two sets of braces are connected directly to each other instead of through a link or block, but these differences are not substantial or essential. The double braces of the Defendants' New-style Form contains all the essential features of the said Exhibit Defendants' Dress Form and of said letters patent: that is, there are two sets of braces extending at different angles from the standard so as to operate against each other and the hip portion of the skirt form, so that by moving the inner ends of either set up or down upon the standard, the hip portion may be enlarged or contracted and supported at any required size.

I find, therefore, all the elements of the said second claim of said letters patent combined in said exhibit substantially as set forth in said second claim.

The Exhibit New-style Form herein referred to is an exact duplicate or fac-simile of the Exhibit Defendants' New-style Form which was introduced in evidence on the motion for preliminary injunction in Morss *v.* The Domestic Sewing Machine Company in the circuit court for the district of Massachusetts, and which was held in said case to infringe the second claim of the patent in suit.

I am the same Charles S. Gooding who made an affidavit for use upon said motion, and am thoroughly familiar with all the exhibits used in said case.

CHARLES S. GOODING.

SUFFOLK, *ss:*

OCTOBER 10TH, 1888.

Subscribed and sworn to before me,

CHARLES F. PERKINS,
Notary Public.

169 And on the same day affidavit of W. H. Knapp was filed in the words and figures following, viz:

Circuit Court of the United States, District of Massachusetts. In Equity.

CHARLES A. MORSS
v.
THE DOMESTIC SEWING MACHINE COMPANY. } No. 2486*a*.

On motion for attachment for contempt.

Affidavit of W. H. Knapp. (*Filed Sept.* 24, 1888.)

W. H. Knapp, of lawful age, being duly sworn, deposes and says: I reside in the city of Brooklyn; I am the general manager of the Union Form Company, of New Haven, manufacturers of dress forms, one style of which, containing certain combination of elements, has been held by this court, on final hearing in the suit of Morss *v.* Ufford *et al.*, to be an infringement of the second claim of the Hall patent of October 12, 1880. I also understand that the court has preliminarily restrained the defendant from selling other styles of dress forms that have been produced by me, each of which were made under and in accordance with letters patent of the United States granted and issued to me. The dress form sold by the defendant, The Domestic Sewing Machine Company, charged by complainant herein as being in violation of an injunction of this court, is also made under and in accordance with letters patent of the United States granted and issued to me August 7, 1888, No. 387,563. I am a codefendant with the Union Form Company and others, of New Haven, Conn., in suits now pending in the United States circuit court for the district of Connecticut, both in
170 law and equity, in which actions the causes are based upon the second claim of the Hall patent No. 233,240 of October, 1880, a decree having been entered therein against me, based upon a stipulation entered into before final hearing was had before the honorable Justice Colt in the Ufford case in the district of Massachusetts; since which, an accounting has been in progress for the purpose of ascertaining profits and damages, if any, to the plaintiff, which accounting is expected to be closed during the next few days.

In the accounting proceedings, which are being conducted by Mr. E. E. Marvin, Esq., as master and committee, full latitude has been given said Marvin by the court, to take and receive such evidence as may be offered tending to give all the facts in the matters pertaining to the questions of anticipations, state of the art prior to the alleged invention of Hall upon which these suits and actions are based as before stated. These facts are evidenced by an opinion and decision by his honor Judge Shipman (which will be found in 35 Fed Rep. 218, 219) based upon a motion of defendant to prohibit complainant and plaintiff from bringing other suits based upon the patent in question until after a final disposition of the investigations before said Marvin, master, etc., which motion was granted, based, as I understand, upon the fact that such "practice saves a multiplicity of suits, time and expense, and promotes the ends of justice." The concern of which I am a member, and myself, are the only

manufacturers of the forms of the kind and combination sold to the defendant company herein, and a form of precisely the same kind and combination of parts as the one in this action, said to have been purchased from the defendant by Mary Mawn, has been put in evidence in the Connecticut suits before referred to, by the defendants themselves, which is to be considered by the said court in that district, and it is respectfully submitted that if the complainant really supposed that the manufacture and sale of such forms were in violation of any decree of the court or were embraced within the terms of the second claim of the said Hall patent of 1880, his remedy was plain and adequate against us. The defendants in the Connecticut suits have given ample bonds to more than doubly cover any possible profit or damage arising from the manufacture and sale of their dress forms, and offered Ufford & Son, if they would petition the court in Massachusetts for a reopening of the proofs for the admission of new evidence and a rehearing, that we (W. H.
171 Knapp and others) would bear all expense of such proceedings. We also desired said Ufford & Son to consent to an appeal to the Supreme Court of the United States from the decision below; both of which propositions said Ufford refused.

Some months ago my brother and myself assumed the defence in the suit of Morss *v.* The Domestic Sewing Machine Company, and are thus subjected to an unreasonable and unnecessary cost by reason of the proceedings against the said company instead of against us as the only manufacturers.

W. H. KNAPP.

Subscribed and sworn to before me this 22d day of September, A. D. 1888.

W. S. HOLBROOK,
[L. S.] *Notary Public, Kings County.*

Certificate filed in N. Y. Co.

UNITED STATES OF AMERICA, } ss:
Massachusetts District, }

I, Alexander H. Trowbridge, deputy clerk of the circuit court of the United States, for the first circuit and district of Massachusetts, certify that the foregoing is a true copy of the affidavit of William H. Knapp, filed in the cause in equity, entitled No. 2486*a*, Charles A. Morss petitioner in contempt proceedings, *v.* The Domestic Sewing Machine Company defendant, now pending in said circuit court.

In testimony whereof I hereunto set my hand and affix
[SEAL.] the seal of said circuit court, at Boston, in said district, this eighth day of October, in the year of our Lord, one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and thirteenth.

ALEX. H. TROWBRIDGE,
Deputy Clerk.

172 And on the 17th day of October, 1888, affidavit of Ruel R. Appleton was filed in the words and figures following, viz:

Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS
v.
WILLIAM H. KNAPP and CHARLES L. KNAPP. } No. —. On Motion to Attach for Contempt.

I, Ruel R. Appleton, on oath depose and say, that I am 35 years of age, and engaged in the business of selling Hall dress forms, and have heretofore made an affidavit upon this motion. Since I made the former affidavit referred to, and on the 11th day of October, A. D. 1888, I received the postal card hereto annexed, marked "A." The skirt form referred to in said card, the price-list of which is therein given, I believe to be the same skirt forms for the making and selling of which I am informed this motion has been made, and I believe it to be the same because I am well acquainted with the market and know there is no other dress form in it like the Hall draping skirt, which I sell, except the skirt form made by the defendants, known as the folding draping stand, which is the same form as the exhibit filed in this case and called "defendants' new-style form," and because the prices quoted on said postal card correspond to the prices advertised by the defendants for their said form, called the folding draping stand.

The writer of said postal card, M. G. Reager, resides at Shamokin, in the State of Pennsylvania, and has bought Hall skirt forms of me — considerable extent.

RUEL R. APPLETON.

173 STATE OF NEW YORK, *City and County of New York,* } *ss:*

Subscribed and sworn to before me this sixteenth day of October, 1888.

JOHN W. RIPLEY,
Notary Public, N. Y. Co.

"A."

No. 61 TO 63 MARKET ST., SHAMOKIN, PA., 10, 10, '88.

GENTLEMEN: Please notice that I must refuse to handle your draping stand, unless you offer at the same price that other parties do the same articles. I am in receipt of a price-list offering—

In 5 doz. lots, at			18.00 doz.
" 2	"	"	21.00 "
" 1	"	"	24.00 "

Again the printed matter was received. Ex. charges 35c., which is not according to contract. The amount will be deducted from bill, as there was no extra charge on any freight.

Yours resp., M. G. REAGER.

(Attached.—J. W. R., *Notary.*)

And on the 19th day of October, 1888, order to show cause was filed in the words and figures following, viz:

174 United States Circuit Court, District of Connecticut. In Equity.

CHARLES A. MORSS }
v.
WILLIAM H. KNAPP *et al.* }

Order on Motion to Attach for Contempt.

Ordered by the circuit court of the United States for the district of Connecticut, ——, A. D. 1888, upon the petition of Charles A. Morss and the affidavits filed in the clerk's office of this court on the 12th day of said October, that William H. Knapp and Charles L. Knapp, defendants in this cause, and each of them, show cause before this court at Hartford, on the 16th day of November, 1888, at 10 o'clock in the forenoon, why they and each of them should not be adjudged guilty of a contempt of the decrees and orders of this court in this cause made on the 16th day of April, 1888, and on the 28th day of March, 1888, provided a copy of said petition, of said affidavits, and of this order be served on such of said defendants as can be found in this district on or before the 10th day of November, A. D. 1888.

N. SHIPMAN,
District Judge.

DISTRICT OF CONNECTICUT, }
New Haven County, } *ss:*

NEW HAVEN, *Oct. 27th,* 1888.

Then and there I served this order, together with petition *together with petition* and affidavits within mentioned, upon Charles L. Knapp herein named by delivering to and leaving a true and certified copy with his wife at his usual place of abode, and
175 upon Wm. H. Knapp herein named by registered letter containing a certified copy as above. Return receipt for same is hereunto annexed.

Attest:

N. D. BATES,
U. S. Marshal,
By MILES B. PRESTON,
His Deputy.

Fees.

Travel	4 00
Service	4 00
End.	25
	$8 25

(Registry return receipt.)

And on the 16th day of November, 1888, motion for contempt was heard and denied by the court; and on the 3rd day of December, 1888, 2d order to show cause on motion in contempt was made and filed in the words and figures following, viz:

176 United States Circuit Court, District of Connecticut. In Equity.

CHARLES A. MORSS
vs.
WILLIAM H. KNAPP *et al.* } Order on Motion to Attach for Contempt.

Ordered by the circuit court of the United States for the district of Connecticut, on this 3rd day of December, A. D. 1888, upon the petition of Charles A. Morss and the affidavits filed in the clerk's office of this court on the 12th day of October last, and upon the certified copy of the affidavit of William H. Knapp upon a motion to attach the defendant for contempt in an action in the U. S. circuit court for the district of Massachusetts between said Charles A. Morss, complainant, and The Domestic Sewing Machine Company, respondent, made in reply to the affidavits of said respondent, which certified copy was filed in the office of said clerk on the 12th day of October, 1888, and upon a certified copy of the affidavits, rescript, decree, and injunction made, ordered, and issued upon a motion for a preliminary injunction therein in said last-named action, which certified copy was filed in the office of said clerk on the 12th day of October, 1888, that William H. Knapp and Charles L. Knapp, defendants in this cause, and each of them show cause before this court, at Hartford, on the 19th day of December, 1888, at 10 o'clock in the forenoon, why they and each of them should not be adjudged guilty of a contempt of the decrees and orders of this court in this cause made on the 16th day of April, 1888, and on the 28th day of March, 1888, provided a copy of said petition, of said affidavits, of said certified copies, and of this order be served on such of said
177 defendants as can be found in this district on or before the 15th day of December, 1888.

N. SHIPMAN,
District Judge.

E. DISTRICT OF NEW YORK, *New York County,* } *ss:*

NEW YORK, *Dec. 15th,* 1888.

Then and there I served certified copy of petition, affidavits, and said certified copies within mentioned upon Wm. H. Knapp by delivering to and leaving with him in his possession the same.

Attest: NATHAN D. BATES,
U. S. Marshal,
By MILES B. PRESTON, *His Deputy.*

Fees.

Travel	14 80
Service	4 00
End	30
	$19 10

DISTRICT OF CONNECTICUT, } ss:
New Haven County, }

NEW HAVEN, *Dec. 15th*, 1888.

Then and there I served a certified copy of petition, affidavits, and said certified copies within mentioned in the hands of Charles L. Knapp by delivering to and leaving in his possession a copy of the same.

Attest: NATHAN D. BATES, *U. S. Marshal,*
By FRANK M. LOVEJOY, *His Deputy.*

Fees.

Travel, 2 ms.	12
Service	2 00

And on the 19th day of December, 1888, motion in contempt was fully argued by the counsel for the respective parties, and on the 15th day of January, 1889, the court filed its opinion in the words and figures following, viz:

178 Circuit Court of the United States for the District of Connecticut.

CHARLES A. MORSS
vs.
WM. H. KNAPP and CHARLES L. KNAPP.

SHIPMAN, *J.:*

This is a motion for attachment of the defendants for contempt of this court by reason of the alleged violation of its final decree granted at the April term, 1888, whereby they were enjoined against the infringement of the second claim of letters patent No. 233,240, to John Hall, dated October 12th, 1880, for an adjustable dress form.

In the suit of the present plaintiff against Ufford *et al.* upon this patent before the circuit court for the district of Massachusetts Judge Colt sustained the validity of said claim and granted an injunction against its infringement. The defendants in this case were the real defendants in the Massachusetts case. The Uffords were there agents and were nominal parties. When this case for the same infringement was reached in this court—the counsel being the same as in the Massachusetts case—no argument was made, as it was known that I regarded the questions as already adjudicated between the parties by the final decree in the first circuit. The question of infringement in both cases turned upon the equivalence of the defendants' devices with the sliding blocks and the rests of the Hall patent.

Thereupon the defendants modified their form with respect to the braces, which were not in dispute in the original case, and
179 placed the new form upon the market. The plaintiff then brought a bill in equity in the first circuit against the Domestic Sewing Machine Company, which had become the defendants' sell-

ing agents, for this new alleged infringement of the same claim of the patent, and, upon motion for a preliminary injunction and after hearing, Judge Colt, on April 4th, 1888, granted the motion. The sewing-machine company was notified of the injunction order on August 25th. In that case also the Knapps were the real defendants and had knowledge of said injunction. They continued to manufacture in this district and to sell the new dress form, and for the alleged violation of the decree of this court this motion for attachment is made.

As the order in the first circuit for a preliminary injunction not being a final decree does not work a technical estoppel against the defendants, it becomes necessary to re-examine and to decide the same question which was before Judge Colt. It may be said, however, that when the circuit court for the district of Massachusetts had enjoined against the use of the modified form in a suit wherein the manufacturers were the real and active defendants and had an intimate knowledge of the proceedings, the subsequent manufacture by them in Connecticut of the same form, if it was an infringement, was not an ignorant or a thoughtless or a hasty one.

The invention is an improved dress form "by means of which every part of the device is rendered adjustable so that it may be applied to a dress of any size or style and fill it out perfectly."

180 The principle of the invention is the expansion or adjustment of a skeleton frame radially, in all directions, from a common center. A central pole or standard supports the entire form. In the part which supports the skirt, upright, thin, elastic ribs are held towards the standard by elastic bands secured to each rib. There are two series of oppositely inclined braces, one above the other; those of the upper series are hung by their inner ends to a collar on the standard and, extending obliquely downward, are hinged to the respective ribs. The braces of the lower series are hinged by their inner ends to a lower collar on the standard and, extending obliquely upward, are hinged to the ribs at the point where the members of the upper series are hinged. The two collars, called sliding blocks, are adjustable. When the form requires expansion the lower collar is elevated, which expands the lower series, but the expansion is governed by the opposing action of the upper series, which compels the movement of the ribs to be substantially parallel with the central standard.

The second claim is as follows:

"In combination with the standard a and ribs c, the double braces e^2, sliding blocks f^1 f^2, and rests h^1 h^2, substantially as and for the purpose set forth."

In the modified form of the defendants there is a series of braces which are hung by their inner ends to a screw-collar on the central standard and, extending from the collar obliquely outward, are hinged to the ribs. Above the screw-collar is a second stationary collar, to which wire links or braces are hung, which, extend-

181 ing obliquely downward, but at a different angle from the members of the other series, are hinged to the braces of the other series midway of their length.

The double braces of the Hall patent are, in fact, oppositely inclined to each other, and by reason of this opposing action the expansion is not like that of a Japanese umbrella, but the ribs continue substantially parallel with the standard and the expansion radiates in all directions. The sole question in regard to the modified form is whether its double braces have the opposite inclination to each other of the Hall braces. There is nothing in the claim or in the specification of the Hall patent which demands that the two sets of braces should continuously hang in absolutely different directions. If there was the defendants' new form would not infringe, because its two sets of braces hang downwardly.

It is necessary that the braces should oppose and control each other by opposing action, so as to compel radial expansion or contraction in all directions from the central standard. The two sets of the defendants' braces hang downward in the same general direction but at different angles, and the difference in the angles is so great that the upper set always operates against and counteracts the movement of the lower set. The outer ends of each set cannot move "towards or away from the standard without changing the distance between the inner ends," and as this distance changes radial expansion in all directions changes. The different sets of braces in the two forms perform the same function by the same mechanical means.

182 I find that the defendants have been guilty of contempt by continuing a manufacture and sale which they had adequate reason to know was in violation of the decree of this court and should pay a fine of fifty dollars and the costs of this application and of the affidavits within thirty days from the date of the order, and if not paid on or before the expiration of said time the defendants stand committed until the same be paid, and that when paid the sum be paid over to the plaintiff in reimbursement.

Charles F. Perkins and Payson E. Tucker, for the plaintiff; John K. Beach and John Dane, Jr., for the defendants.

And on the 11th day of February, 1889, evidence taken before master was filed in the words and figures following, viz:

183 Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS *et al.*
vs.
WM. H. KNAPP. } No. 316. Law.

Before E. E. Marvin as a committee, at office of J. K. Beach, New Haven, May 9, 1888.

Present, C. F. Perkins, for plaintiff; J. K. Beach, for defendant.

Counsel for plaintiff offers in evidence letters patent issued to John Hall, No. 233,240, and dated Oct. 12, 1880, for adjustable dress forms.

(It is agreed by counsel that a Patent Office copy of the specifications and drawings of said patent may be substituted therefor in evidence, which copy, when produced, shall be marked Exhibit A.)

Plaintiff's counsel offers in evidence an assignment of said letters patent, No. 233,240, from said John Hall to the plaintiff, dated April 27, 1886, and recorded in the Patent Office May 1, 1886, Liber R 34, page 119.

(It is agreed by counsel of respective parties that a copy of said assignment may be substituted for the original and marked Exhibit B.)

Mr. EVERETT MORSS, a witness produced by the plaintiff, sworn and examined by Mr. PERKINS:

184 Int. 1. What is your name, age, residence, and occupation?

A. My name is Everett Morss, age 22, residence Boston, and am in the employ of the plaintiff.

Int. 2. What relation are you to the plaintiff, if any?

A. Son.

Int. 3. Are you acquainted with the defendant in this case?

A. I am.

Int. 4. What acquaintance have you, if any, with the manufacture of dress forms and with the various styles which have been put on the market? State the period of acquaintance, etc.

A. For something over two years I have had charge of plaintiff's manufactory, and I think I have seen every dress form that has been on the market, and have examined them all carefully.

Int. 5. What acquaintance, if any, have you had, and for how long a time, with the dress forms manufactured by the defendant?

A. I have seen these dress forms on sale in Boston, certainly as far back as September, 1886, and have seen them continually on sale ever since, till within a month, in New York and Boston, and I have seen the same dress forms being manufactured in defendant's manufactory here at New Haven.

Int. 6. What styles of dress forms made by the defendant, and to what extent, did you see offered for sale in Boston in September, 1886?

A. I saw as many as twenty forms at one time which were facsimiles of this one here to all intents and purposes.

(Witness refers to a dress form standing at his side in making this answer, which plaintiff's counsel puts in evidence, and it is marked Defendants' Complete Dress Form.)

Int. 7. Are you familiar with the Exhibit Defendants' Dress Form offered in evidence by the complainant in the suit, Morss *vs.* Ufford *et al.*, in the district of Massachusetts, and also offered in evidence in the suit of Morss *vs.* Knapp *et al.* in the district of Connecticut, in equity? If so, will you please compare it with the exhibit in this case, Defendants' Complete Dress Form?

185 A. I am familiar with exhibit referred to in the Ufford case, and this one here, Defendants' Complete Dress Form, is the same thing, practically the same thing.

Int. 8. What do you mean by the words practically the same thing?

A. I mean that the only difference is in quality of workmanship and possibly style of finish.

Int. 9. In your answer to Int. 6, you say "were fac-similes of the one here to all intents and purposes." Will you state what you mean by the words "to all intents and purposes"?

A. "Fac-similes to all intents and purposes" means the same as "practically the same thing;" that is, means that the only difference is in the quality of workmanship or possibly style of finish.

Int. 10. What other style of dress form made by the defendant did you see, if any, before the beginning of this suit, that is, Nov. 16, 1886?

A. A skirt form without the bust, made the same way the skirt to Exhibit "Defendants' Complete Dress Form" is made, and operated by a similar motion as in the Exhibit "Defendants' Complete Dress Form."

(Plaintiff's counsel offers in evidence a certified copy of the decree in the suit of Charles A. Morss *vs.* Wm. H. Knapp *et al.*, No. 538, in equity, in the circuit court of the United States for the district of Connecticut, and the same is marked Exhibit C.)

(Defendant's counsel objects to the offering in evidence of the Exhibit C, so far as the same is intended to operate as an estoppel against the defendant, on the ground that said decree is not set up in the complaint.)

(Committee admits the exhibit subject to further objection by the defendant if the pleadings remain the same as at present till final report.)

Int. 11. Are you acquainted with the parties in the suit in which the decree was entered, a copy of which has just been offered
186 in evidence? If so, please state who they are and what relation, if any, they have to the parties in this cause.

(Same objection and same order as before.)

A. The parties to the suit in which this decree was entered are identical with the parties to the suit now being heard, with whom I have already said I was acquainted.

(It is agreed that in this hearing signatures and jurats to the testimony may be omitted.)

Adjourned to May 14, 10 a. m.

NEW HAVEN, *May* 14, 1888.

Defendant's accounting continued.

Parties present as heretofore.

Wm. H. Knapp, the witness on stand, telegraphed his counsel

that it was impossible for him to be present, on account of rheumatism.

Adjourned to May 17, 10 a. m.

NEW HAVEN, *May* 17, 1888.

Defendant's accounting continued.

Parties present as heretofore.

WM. H. KNAPP, a witness produced on behalf of plaintiff, sworn and examined by Mr. PERKINS:

Int. 1. What is your name, age, residence and occupation?

A. My name is Wm. H. Knapp, age 25 years, residence Brooklyn, N. Y., occupation manufacturer and commission merchant.

Int. 2. Are you one of the defendants in this case?

A. I am; yes, sir.

Int. 3. Have you and your codefendants been engaged in the manufacture of dress forms prior to the date of this writ and since the 27th of April, 1886?

A. We have; yes, sir.

187 Int. 4. Please state how many and what dress forms you made or sold during the period mentioned in the last interrogatory.

A. 1,358 full figures, like Exhibit Complete Form; 666 skirt forms like Exhibit Skirt Form.

Int. 5. Have you present with you the books of account from which you took the figures given in your last answer?

A. I have.

Int. 6. Did you personally make the examination of the books?

A. I did; yes, sir.

Int. 7. And you are able to state positively, are you, that the statement you have just made includes the entire number of forms made or sold since April 27, 1886, until the beginning of this suit?

A. Yes, sir; I do to the best of my knowledge and belief.

Int. 8. To whom did you sell the dress forms mentioned in your answer to Int. 4?

A. Substantially to the same customers mentioned in defendant's statement filed to-day in the equity suit of Morss *vs.* Knapp *et al.*

Adjourned to 82 Devonshire street, Boston, Mass., May 21, at 9.30 a. m.

BOSTON, MASS., *May* 21, 1888.

Parties present as heretofore.

Hearing before committee continued.

Mr. CHARLES A. MORSS, the plaintiff, sworn and examined by Mr. PERKINS:

Int. 1. What is your name, age, residence and occupation?

A. My name is Charles A. Morss, my age is 65 years, my residence is Boston, Mass., and my occupation is wire-work manufacturer.

Int. 2. What was the cost of the manufacture of the dress forms made by you, apiece, between April 27, 1886, and Nov. 16, 1886?

A. Ninety-five cents apiece for the skirt form, and $2 for
188 the full figure. I have not the figures before me, and shall have to testify from memory as to the full form. I have the figures here before me as to the skirt.

Int. 3. Can you testify whether $2 is more or less than the actual cost of the full form during the period in question?

A. It is more, to the best of my knowledge and belief.

Int. 4. You say you are testifying from memory as to the cost of the full figure. What do you mean by that?

A. Different from the skirt form; I had that in my pocket, down in black and white, what that cost. The full figure I have not.

Int. 5. Have you ever made an estimate including all the items, and, if so, do you know what the total of them is, and where that estimate now is?

A. Yes, I have made estimates of it, and I can make another one, and it will come inside of $2; there cannot be any mistake.

Int. 6. Do you know where that estimate is?

A. I think I could find some at the shop.

Int. 7. Please make search for them and produce all estimates that you may find at the next hearing in this case, together with your books of account containing the transactions of the period in question, if defendant's counsel so desires.

Int. 8. Were the defendant's goods upon the market during the period in question?

A. Yes, I think they were.

(Cross-examined by Mr. BEACH:)

X Int. 9. The testimony you have just given respecting the cost of dress forms is based on exactly the same information as that which you gave in the suit of Hall *vs.* Knapp, is it not?

A. On the skirt form it was. I stated, in both cases, it was estimated on the complete form.

X Int. 10. Did you, or not, pay Mr. Hall a considerable sum of money or other valuable consideration for his interest in the dress-form business and for the various patents, including the one in suit?

(Defendant's solicitor objects to the question as immaterial. Question admitted.)

189 A. I did.

X Int. 11. Did you during the period in question make any other style of dress forms than the Exhibit Plaintiff's Skirt Form, and Plaintiff's Complete Figure, and the skirt form with the wooden posts?

A. No, sir, I don't know that I did.

(Redirect by Mr. PERKINS:)

R. D. Int. 12. Compare the cost of the skirt form with wooden post with the cost of the iron-post form.

A. The wooden-post form cost thirteen cents apiece less than the iron posts.

R. D. Int. 13. Who had charge of the introduction and sale of your dress forms during the period in question?

A. I had general charge of it myself. It came into our regular business. I have also three or four salesmen; I do not know that one more than another had charge of the matter.

R. D. Int. 14. What relation had Mr. R. R. Appleton to your business during this period?

Ans. He has the general agency now, but I do not know when he began. If he began to be general agent as early as that, why then he was general agent in charge of those sales.

R. D. Int. 15. Were your goods continuously on the market during the period in question?

A. They were.

BOSTON, MASS., *July* 9, 1888.

Hearing continued.

Present, Messrs. Perkins and Tucker, for plaintiffs; Mr. Dane, for defendant.

Adjourned to July 10, 1888.

BOSTON, MASS., *July* 10, 1888.

Hearing continued.

Present, Messrs. Perkins and Tucker, for plaintiffs; Mr. Dane, for defendant.

Adjourned to July 11, 9.30 a. m.

190 BOSTON, MASS., *July* 11, 1888.

Hearing continued.

Present, Messrs. Perkins and Tucker, for plaintiffs; Mr. Dane, for defendant.

The following stipulation was consented to and entered of record:

538. Equity.

It is stipulated by the counsel for the respective parties that the evidence taken and to be taken herein may be used so far as the same is applicable and admissible, upon the final hearing in the cases, number 316 law, and 336 law, in this court, with the same force and effect as if originally taken in said cases. It is further stipulated by the counsel for the respective parties that the evidence offered and to be offered in the cases, number 316 law, and 336 law, in this court, may be considered as introduced in this case, so far as it is applicable and admissible, and with the same force and effect as if originally taken herein.

Adjourned to July 12, 9.30 a. m.

BOSTON, MASS., *July* 12, 1888.

Hearing continued.

Present, Messrs. Perkins and Tucker, for plaintiffs; Mr. Dane, for defendant.

Adjourned to July 13, 9.30 a. m.

BOSTON, MASS., *July* 13, 1888.

Hearing continued.

Present, Messrs. Tucker and Perkins, for plaintiffs; Mr. Dane, for defendant.

Adjourned to July 14, 9.30 a. m.

191 BOSTON, *Aug.* 4, 1888.

Hearing before committee continued.

Parties present as heretofore.

Mr. EVERETT MORSS, a witness produced by the plaintiff, recalled:

Int. 1. What connection with the dress-form business of the plaintiff did you have during the period from April 27 to Nov. 16, 1886?

A. I was active manager in charge of the dress-form business during the whole period in the same way as during the period covered by the equity case.

Int. 2. Please state what was the cost of the manufacture of skirt forms, like Exhibit Plaintiff's Skirt, during the period in question herein.

A. The cost of the skirt, like Exhibit Plaintiff's Skirt, was ten or twelve cents more than during 1887, which estimate I have given in the equity suit. The cost of the wood-post skirt was six or seven cents more than my estimate for 1887 in the equity case.

Int. 3. Please answer the last question, in reference to the complete form, like Exhibit Plaintiff's Complete Forms.

A. The cost of the complete form was sixteen to eighteen cents more than my estimate given in the equity suit for the year 1887.

Int. 4. When you speak of your estimates given in the equity suit, do you mean estimates of material and labor, or the total cost, including allowances for incidentals, etc.?

A. Total cost.

Int. 5. Do you know what net receipts were per form during the period now inquired about, or can you approximate the same?

A. I know, in a general way, that we received more per form during this period than during the period of the equity suit up to April 30, 1888, and as an estimate I should say that our receipts were within 15 per cent. of the wholesale prices.

Int. 6. Were there any expenses of selling dress forms during the period now inquired about, other than these included in the
192 business expenses you have enumerated in your testimony in the equity case, and if so, what?

A. No.

Int. 7. What were the wholesale prices of the dress forms, referred to in your testimony, during the period in question?

A. Complete forms, $54 per dozen; skirt, like Plaintiff's Exhibit Plaintiff's Skirt, $30; wood-post skirt, $24.

(Cross-examined by Mr. DANE:)

X Int. 8. In stating the items in this case to-day, you have estimated many of them instead of taking them from the book accounts of the complainant, have you not?

A. Yes.

EVERETT MORSS.

Subscribed and sworn to before me, this 4th day of August, A. D. 1888.

E. E. MARVIN, *Committee.*

193 Circuit Court of the United States, District of Connecticut.

JOHN HALL, Acting for C. A. MORSS,
vs.
WM. H. KNAPP *et al.* } No. 336. Law.

Before E. E. Marvin as a committee, at office of John K. Beach, Esq., New Haven, May 8, 1888, 10 a. m.

Present, C. F. Perkins, Esq., for plaintiff; John K. Beach Esq. for defendant.

Plaintiff's counsel offers in evidence letters patent issued to plaintiff, No. 233,240, and dated Oct. 12, 1880, for adjustable dress forms.

(It is agreed by counsel that a Patent Office copy of the specifications and drawings of said patent may be substituted therefor in evidence, which copy when produced shall be marked Exhibit A.)

WM. H. KNAPP sworn as a witness for plaintiff, and examined by Mr. PERKINS:

Int. 1. What is your full name, age, residence and occupation?

A. Wm. H. Knapp, age 25 years, residence Brooklyn, N. Y., occupation manufacturer and commission merchant.

Int. 2. Are you one of the defendants in this case?

A. I am; yes, sir.

Int. 3. What kind of manufacturing do you and your codefendants carry on, and how long have you been engaged therein?

A. We have been engaged in manufacturing dress forms four years and a half.

194 Int. 4. Have you seen the exhibit offered in evidence by the complainant, and marked defendants' dress form, in the suit against Ufford *et al.*, in the district of Massachusetts, and yourself and your codefendants in this district, and do you understand the construction of the same?

A. I did not see that one put on in Providence; no, sir.

Int. 5. I asked you with reference to the one put in evidence in the suit against you in this district, as well as the one you speak of as put in at Providence; will you please answer?

A. I did not see it to know it; I saw no dress form marked Exhibit Dress Form.

Int. 6. Did you attend the argument on the motion for preliminary injunction in the equity suit of Morss against you in this district?

A. Yes, sir; I did the one held at Hartford.

Int. 7. Did you see a full-dress form which was made by you or your codefendants standing in the court-room at that time?

A. I did; yes, sir.

Int. 8. Did you see more than one?

A. No, sir.

Int. 9. Did you see a skirt form made by you or your codefendants in the court-room at the time of said argument?

A. I did; yes, sir.

Int. 10. Did you see a skirt form at that time, which was made by you, and which had substantially the same construction as the skirt portion of the said full or complete dress form, which you have testified you saw?

A. I did not; no, sir.

Int. 11. What difference, if any, do you have in mind between the skirt form which you saw there, which was made by you, and the skirt portion of said full or complete dress form?

A. A difference in construction and operation, and a difference in material, also.

Int. 12. Please specify the differences in construction and operation.

A. The differences in construction were the use of a smaller rod in the skirt than in the full figure, a difference in the construction of toggles and in the amount of work put on the dress forms,
195 it requiring less work to make a skirt form when operated alone, or when it is made to be operated alone, than it does when the skirt is made to be operated with the bust, which constitutes the full figure.

Int. 13. The differences consists wholly, do they not, in material, workmanship and dimensions?

A. No, sir.

Int. 14. What else?

A. Mode of operation.

Int. 15. Specify, if you please, the differences in the mode of operation.

A. When the skirt form is used separately as a skirt form, there is one movement for the waist and another movement for the operation of the skirt, both operated from the top of the skirt, and when the skirt is used in connection with the bust, the waist and lower portion of the skirt are both operated by one movement.

Int. 16. Is there any difference between the operations of the upper portions of the skirt forms in these two dress forms?

A. There is no difference in the manner of operation.

Int. 17. Then you would say, would you not, that there is no mechanical difference between the construction and modes of operation of the upper portions of the skirt forms of these dress forms?

A. There is a difference. There are two operations required to adjust a skirt when the skirt is made alone, and there is only one

operation required to adjust a skirt when it is made in connection with a bust.

Int. 18. Does it require two operations to adjust the upper part of the skirt form, in either figure? If so, what are they?

A. It does not necessarily require them to make it operate, but the operation of them makes the skirt more complete.

Int. 19. Is there any mechanical difference between the adjusting mechanisms in the upper portions of the skirt forms referred to?

A. There is. The sleeve is used in connection with the toggles, at the top of the full figure, where the skirt is used alone as a skirt; and where it is used in connection with the bust, then the sleeve is not a portion of the toggle.

196 Int. 20. Will you please to produce, after the noon recess, for the inspection of the committee, a specimen of the full-sized figure and one of the skirt forms referred to in your last answer?

A. I will consult with counsel.

Int. 21. Have you with you your books of account of your dress-form manufacturing business which were kept at the time you began it? if so, will you please produce them?

(Defendant's counsel objects to this request to produce the books, on the ground that no infringement of the patent in suit has yet been proved, and other objections are reserved.)

A. By advice of counsel, I decline to produce the books.

Int. 22. When did you or your codefendants first make a dress form substantially like the full dress form which you have stated in your testimony this morning you saw at the time of the argument for preliminary injunction?

(The question is objected to by defendants' counsel on the ground that complainant must make *prima facie* proof of infringement, or offer evidence tending to show that the conduct of the defendants has made such proof difficult or impossible before examining the defendants themselves upon that issue. My reason for this objection is this: this suit was initiated by an attachment of defendants' property to the amount of $15,000, which caused them a very considerable expense and annoyance. Now, if the complainant, before attaching that property obtained proof of infringement, it is easy to get that proof. If he neglected to get that proof, or was unable to get such proof, this was his fault, and I don't think he ought to try to repair that error now by an inquisition of the defendant made for the purpose of finding out whether he has really a cause of action or not.)

(Plaintiff's attorney says that the issue presented is whether 197 the defendants made a certain device prior to the date of the writ. I am not aware of any rule of evidence which exempts the defendants, while testifying as witnesses, from answering any questions bearing upon that issue. Defendants' objection does not seem to go to the admissibility of the question as a matter of law.)

(The committee declines to direct the witness to answer this question at this stage of the hearing.)

Int. 23. Did you or either of your codefendants to your knowledge make or sell a dress form substantially like the full or complete dress form, referred to in my last question, before this suit was brought?

(Same objection and same ruling.)

Int. 24. Did you or either of your codefendants to your knowledge make or sell a dress form substantially like the full or complete dress form referred to in my last question, before the 27th day of April, 1886?

(Same objection as to Int. 22 and same ruling.)

(The committee decides that the last three questions are objectionable, but that the witness may be asked how many and what dress forms defendants made during the period covered by the questions named.)

Adjourned to Thursday, May 10th, 10.30 a. m.

NEW HAVEN, *May* 10, 1888.

Plaintiff's evidence continued.

Parties present as before.

Mr. EVERETT MORSS, a witness produced by plaintiff, sworn and examined by Mr. PERKINS:

Int. 1. What is your name, age, residence and occupation?

198 & 199 A. My name is Everett Morss, age 23, residence Boston, and am in the employment of the plaintiff.

Int. 2. Do you know what contract, if any, was made between the plaintiff in this case and Charles A. Morss, for whose benefit it was brought, relative to the claims for damages which had accrued under the patent upon which this suit was brought, prior to the time it was assigned to said Morss?

A. I do. The sale of this patent and other dress-form patents by Mr. Hall included the business carried on by them jointly.

(Defendants' counsel interrupts to inquire whether that contract to which the witness refers was in writing or not.)

(Plaintiff's counsel replies that a written contract exists which bears no date, but probably was executed at the time of the sale referred to, and such contract is presented for the inspection of defendants' counsel, if he desires.)

(Plaintiff's counsel presents memorandum of the contract.)

(It is consented that witness may complete his answer, subject to objection hereafter, if desired.)

Witness continues—Including all book accounts, both to the credit and debit side, and all other interest in the business or patents whatsoever, and the matter of past damages from infringers was specifically mentioned to me by Mr. Hall as a part of the property

transferred, such mention being mentioned both previous to and subsequent to the signing of the papers.

Int. 3. Who conducted the negotiation for the property referred to in your last answer?

A. Mr. Hall made his first proposition to sell to me as representing Charles A. Morss, and afterward, when the principals came together, I had a voice in the arrangement of the details, being present either alone or with Charles A. Morss during all of the negotiations.

200 Int. 4. Please examine the contract now shown you and state if you know by whom the signatures are made and what, if anything, was done with it after it was executed.

(Plaintiff's counsel calls witness's attention to a contract purporting to be a contract between Charles A. Morss and John Hall, and offers the same in evidence, to be marked Exhibit D.)

A. The signatures were not executed in my presence, but the contents of this agreement were known to me, and I recognize the signatures as the genuine signatures of the respective parties. This paper was filed away by Mr. Charles A. Morss and found by me in his private safe, yesterday.

Adjourned to May 14, 10 a. m.

NEW HAVEN, *May* 14, 1888.

Defendants' accounting continued.

Parties present as heretofore.

Wm. H. Knapp, being the defendant under examination, telegraphed his counsel that he was unable to be present, on account of rheumatism.

Complainant places in evidence a copy of the decree in Morss *vs.* Knapp, No. 538 in equity, and the same is marked Exhibit C.

Adjourned to May 17, 10 a. m.

NEW HAVEN, *May* 17, 1888.

Defendants' accounting continued.

Parties present as heretofore.

Mr. CHARLES A. MORSS, the complainant, sworn and examined by Mr. PERKINS:

Int. 1. What is your name, age, residence and occupation?

A. My name is Charles A. Morss, I reside in Boston, age 65, and my occupation is wire-works manufacturer.

Int. 2. How long have you been engaged in manufacturing wire goods?

201 A. Some forty years.

Int. 3. How long have you been manufacturing adjustable dress forms?

A. About six years.

Int. 4. Have you been carrying on the manufacture of dress forms alone, or in connection with others? If not alone, state in connection with whom.

A. The past two years I have been alone; prior to that, I was with Mr. John Hall, the patentee named in the letters patent in suit—in company with him.

Int. 5. What bargain, if any, did you make with Mr. Hall relating to dress forms at the time you dissolved your business connection with him?

A. I made the bargain stated in this contract, the contract put in evidence, marked Exhibit D.

Int. 6. Are you acquainted with the handwriting of Mr. Hall? and if so, state whether or not you recognize the signatures to the contract referred to in your last answer, and state what was done with the contract, if you know, after it was executed.

A. I am familiar with Mr. Hall's handwriting. The signatures are genuine without any doubt. The one I know to be Mr. Hall's, and the other I know to be mine, and this contract was delivered to me by Mr. Hall when I paid him the money, and has been in my possession ever since.

Int. 7. What style or styles of adjustable dress forms have you been manufacturing, either alone or in connection with Mr. Hall?

A. In connection with Mr. Hall and alone, both, we have made two styles of skirt forms, one with wood posts and one with iron posts, and then we make one that we call the complete form which includes the bust, the whole complete; the skirt form is like an exhibit hereafter to be produced by the complainant and marked Plaintiff's Skirt, and the complete form is like the exhibit hereafter to be produced and marked Plaintiff's Complete Form.

Int. 8. At the time you began the manufacture of dress forms with Mr. Hall, were there any dress forms in the market which were adjustable in all directions from the standard? If so, state
202 by what name or names they were known, and whether they are still manufactured.

A. To my knowledge there was nothing made that resembled Mr. Hall's at all; if there was I did not know it. The only thing that came anywhere near it was a form that opened in two parts called the Everett form, made then and to-day to a very limited extent, I believe. I mean to say by the words, "the only thing that came anywhere near it," that I did not know of anything that opened at all.

Adjourned to May 17, 9.30 a. m.

NEW HAVEN, *May* 17, 1888.

Defendants' accounting resumed.

Parties present as heretofore.

Testimony of Mr. KNAPP resumed:

Int. 25. How many and what adjustable dress forms did you and your codefendants make or sell between the date of the patent in suit, Oct. 12, 1880, and the 27th of April, 1886, the date of the assignment of said patent from the plaintiff to Charles A. Morss?

A. We made two kinds of folding skirts. I could not give the number at this time, but will make a statement of the number of

each kind of each figure made and sold during the period named before this testimony closes. I do know how many figures like the exhibits we made and sold. Of these we made and sold 1,053 full figures, and 477 skirts.

Int. 26. About when did you begin to make dress forms like the exhibits?

A. The first part of 1884, January.

Int. 27. When did you begin to make the other styles of folding figures, referred to in your testimony to-day?

A. One about the 1st of December, 1886, and the other about the 1st of April, 1887.

Int. 28. In your answer to Int. 25 you say "We made two kinds of folding skirts. I could not give the number." To what kind of skirts do you refer by the words quoted?

A. I did not understand the question. The two kinds of skirts I named were made subsequent to the period inquired of in Int. 25.

203 Int. 29. Did you make any dress forms prior to January, 1884?

A. No, sir; not that we sold.

Int. 30. Did you make any afterwards and before April 27, 1886, but these like the exhibits?

A. Yes, sir; but we never sold any of them. These figures, however, operated successfully and can be produced, if necessary. We gave away samples of them.

Int. 31. To whom did you sell the dress forms like the exhibits which you made before April 27, 1886?

A. To about the same lot of customers who appear in the statement presented in the equity case to-day.

Int. 32. And in about the same proportion?

A. I should judge so.

Int. 33. How early did you begin to sell to the Domestic Sewing Machine Co. or its representatives?

A. In May, 1884, I think.

Int. 34. What other styles of adjustable dress forms were upon the market in the early part of 1884?

A. The Everett and the Le Moine. The Le Moine was a folding, draping stand, operated on somewhat the same principle of the Hall skirt, and occupied about the same size box.

(Cross-examined by Mr. BEACH:)

X Int. 35. Have you now with you all the books which show how many dress forms were made and sold by you or your codefendants from the time you began to make dress forms to April 27, 1886?

A. Yes, sir.

X Int. 36. Are the figures which you have given based on an examination of the books, made by you?

A. They are; yes, sir.

Adjourned to May 21, 9.30 a. m.

BOSTON, *May* 21, 1888.

Evidence of Mr. C. A. MORSS continued.

Parties present as heretofore.

Int. 16. Please state to what extent your trade was affected
204 by the manufacture and sale of the Everett form at the time you began the manufacture of dress forms, and ever since.

A. Very little indeed, for the reason that they made very few of them at that time, and they make very few of them now; at least if they do, we do not hear of it.

Int. 17. What dress form, if any, afterwards appeared in the market, and about when, if you know?

A. Shortly afterward; I don't think I could give the date when it started. There was one called the Diamond and one called the Le Moine, but they were combined shortly afterward. They both belong to the same parties, and were virtually one and the same thing.

Int. 18. Were there any other styles of dress forms than you have enumerated on the market in January, 1884, the time when defendants' forms were first introduced?

A. Not to my knowledge.

Int. 19. What are the commercial differences between the Le Moine form and the defendants' form, and what resemblances are there, if any, between each of those forms and the style made and sold by you?

A. The Le Moine form resembles ours but very little, the braces are attached to but one part of it, and throw open the skirt in a round shape like a balloon or a barrel, and after that it is not adjustable, that is, after it is open. They never made a bust at all, to resemble ours or not to resemble ours, they made skirts only; they never made the full figure, so that they could not have competed with us in that, any way. It has never come into competition with us to any great extent, for the reason that they took different methods to sell it; they sold it largely, what was sold in this locality, in the East, on the installment plan, and met a different class of trade entirely than ours. The sales of them in this market have been very small.

Int. 20. In what stores, if any, have you known the Le Moine form to be on sale in New England?

A. Outside of Boston I don't know much about them. I have never seen any outside of Boston. In Boston I have seen them in two places only. The largest of those places was Ufford's. The other place I don't know how many they sold, but I should judge not as many as at Ufford's, as they don't do nearly the business.

205 Int. 21. What acquaintance did you have with the dress-form trade before January, 1884, and what experience did you have in introducing dress forms into the market?

A. Two years before that I had taken Mr. Hall's form and developed it. I had taken it when it was almost no business at all, and had spent two years of time and a great deal of money

in introducing it, and had succeeded in building up quite a large business, comparatively, for that. We introduced it by agents which we sent out, also by circulars which we sent out to a large extent, and some advertising.

Int. 22. Through what section of the country?

A. Throughout New England and New York State and Pennsylvania, and to a limited extent in Chicago and some of the Western places, but we did not have much trade West up to that time.

Int. 23. In what lines of trade did you sell your dress forms?

A. We sold them largely through the paper-pattern agency, more so than any other one way; also largely to sewing machine companies.

Int. 24. Have you examined the document marked defendants' statement, and introduced in evidence in the suit against these defendants in equity, and particularly that part presenting a list of the customers to whom they sold, and if so, please state whether said list contains any customers to whom you sold in January, 1884, or before this suit was brought, and before the assignment of the patent to you, and state who they are.

A. Yes; there are a large number of them there. There is the Domestic Sewing Machine Co.: we sold them $1,000 a year some years; that was before Knapp went into business, that they bought most. I have sold them both before January, 1884, and between that and April, 1886.

Here is H. Bristow, Brooklyn, N. Y.: he is another customer that we sold to before Knapp went into business.

John Wanamaker & Co., of Philadelphia: I sold them goods before Knapp went into business and since; I have always sold them since the beginning.

S. N. Ufford & Son, of Boston: I have sold them before and some since.

J. G. Blaisdell, of Baltimore: we have sold them a good many forms; we sold them before, and we sell them some now.

206 W. G. Brown & Co., Montreal: we have sold them a good many, some before and some since.

There are a great many names here to whom I have sold goods, but I do not want to locate the time; I do not wish to swear to it. If I had my books here I could.

Int. 25. Through what lines of trade did the defendants introduce their dress forms into the market?

A. They followed mine as near as they could; they followed my customers, and they got the benefit to a great measure of the time and money I had spent in establishing these agents and this business.

Int. 26. In what sections of the country did they first introduce their dress forms?

A. To the best of my knowledge, New York city.

Int. 27. And in what markets did you afterwards find them?

A. I found them in all the principal places, like New York, Philadelphia, Boston, and from those points they were distributed over the country.

Int. 28. Please compare the effect which the sale of defendants' goods had upon your business with that which it had upon the business of Le Moine & Everett manufacturers.

(Defendants' solicitor objects to the question, as it does not appear that witness has any knowledge of the business of Le Moine & Everett dress forms. Question admitted.)

A. I don't know anything about what effect the sale of the Knapp form had upon the Everett & Le Moine form; I don't think I am prepared to say. I can say what effect it had on mine, but not on theirs.

(Plaintiff's counsel offers in evidence a dress form, and the same is marked Plaintiff's Skirt, and plaintiff's counsel then adds the waist portion to the skirt, and the two are offered in evidence and marked Plaintiff's Complete Form, these two exhibits being presented in pursuance of the notice contained in the answer to Int. 7.)

Int. 29. Will you please state what profit you made upon the forms, like the two exhibits just introduced, on each?

207 A. On the skirt form, on the wholesale price, we made about $1.50; at the retail price, $2.50. On the full figure we made, at wholesale, about $2.50, and at retail $4.50. That wholesale price here mentioned is what they are always billed at.

Int. 30. Before April 27, 1886, did you make any discounts whatever upon the prices just given, and if so, to whom, and how much, and on what proportion of all the figures you sold was this discount given?

A. I had at first large expenses in introducing and selling these; in some cases these expenses had come in the shape of my paying agents wages and traveling expenses. In several cases I had varied the price. One was in California, where the expenses were large; I made a discount on the forms; another was in Chicago, where a party went out and located. There were four or five cases like that, where the expenses were large and the sales were large, that I made extra inducements. The largest discount we ever made was 25 per cent. I cannot say on what proportion of the forms I sold that I did make a discount; I am not prepared to say.

X Int. 31. Do the Exhibits Plaintiff's Skirt and Plaintiff's Complete Form represent exactly and in every particular the forms which were made by you between Jan. 1, 1884, and April 27, 1886?

A. It does as far as these are concerned. We make a style having a wood post, as I testified before; we always have made a wood post for the skirt form of one style.

X Int. 32. Excepting the fact that the post was wood instead of iron, were or were not the wood-post forms exactly like the Exhibit Plaintiff's Skirt?

A. It was only so far as it was necessary to fit a wood post; the foot of course was different. I don't know how close you want to tie me up. I could not say that the ribs were a half inch longer or shorter; it was practically the same thing; we did not vary the patent.

X Int. 33. What I want to know is, whether there is any variation at all in that thing there and what you made in 1884, 1885, and the first part of 1886.

A. No.

208 X Int. 34. Did all the skirt forms which you made during that period have graduated tape bands?

A. They did.

X Int. 35. Did all the skirt forms which you made in that period have the ribs constructed as in this Exhibit Plaintiff's Skirt?

A. They did.

X Int. 36. Did all the busts that you made during that period have the adjustable shoulder, such as is shown in the Exhibit Plaintiff's Complete Form?

A. The adjustment of the shoulder was precisely the same. I cannot say that the means of getting at it were the same. We might vary a very little.

X Int. 37. Did all the complete forms which you made during the period in question have the adjustable breast pieces shown in the exhibit?

A. They did.

X Int. 38. Did all the skirt forms which you sold during the period in question have the adjustable rest for collar between the sliding blocks, to which the double braces are attached, as is the case with the Exhibit Plaintiff's Skirt Form?

A. They did. That was Mr. Hall's idea; that was just as he left it; we never varied it at all. It has never been changed at all since Mr. Hall left it, to my knowledge.

X Int. 39. Is that true of the wooden post skirt form?

A. There is none on the wood-post form.

X Int. 40. Did you not bring suit against a manufacturer or dealer in the Le Moine form, claiming that the Le Moine form was an infringement on the second claim of the patent in suit?

(Complainant's solicitor objects to the question as immaterial and as secondary evidence.)

(Question admitted.)

A. I don't know what claim it was. I know we brought a suit against them on the principle that their braces, any braces used, was an infringement on ours. I don't understand what the different claims contained in the patent were.

X Int. 41. You say in answer to Int. 12 "that the Le
209 Moine form has never come into competition with us to any great extent, for the reason that they took different methods to sell it * * * and met a different class of trade entirely, than ours." Do I understand from this last phrase that there were classes of trade in the dress-form business which you did not or could not meet?

A. We did not take the same methods to sell. I mean to say that their goods did not reach the same trade with mine, to the same extent.

X Int. 42. You have stated distinctly that the Le Moine form did

not compete to any great extent with yours, and you have stated distinctly that it met a different class of trade entirely from yours. Now I want to know whether it is a fact that there are entirely different classes of trade in the adjustable dress form business?

A. I mean to say that there are two classes of trade. I have a great many applications to sell them on the installment plan, which I always refuse, and I can say that within forty-eight hours I had a man come into my shop claiming that he had bought one of my forms of one of my agents on the installment plan, and he had paid $1 down for it, and it had proved to be not what it was represented to be, and he wanted his $1 back. On examination it proved to be one of the Le Moine forms, and not to have been sold by one of my agents; but I don't mean to say that they don't sell them any other way, of course.

X Int. 43. So far as the Le Moine form is not sold on the installment plan, it does compete with your form, does it not?

A. To some extent; yes, sir.

X Int. 44. I understand that the figures given by you in answer to Int. 22 were the prices at which the goods mentioned were billed to customers. Is that so?

A. Yes, sir.

X Int. 45. Were these prices the same for the wooden-post skirts as for the metal-post skirts?

A. No, sir.

X Int. 46. Have you a patent which covers the use of graduated tape bands when applied in the manner shown in Exhibit Plaintiff's Skirt?

A. To the best of my knowledge, yes; I suppose so.

X Int. 47. Have you a patent for the peculiar method of constructing the ribs, as shown in plaintiff's skirt?

210 A. That I don't know. I know it applies to the braces. I am not a lawyer, and cannot tell whether it applies to the ribs.

X Int. 48. Do you remember whether you have a patent for the extension braces in the lower part of the skirt?

A. I think I have.

X Int. 49. I see that the feet of the exhibit are marked with the word "patented;" that "patented" refers to a construction of the folding feet, does it not?

A. I understand that that word "patented" refers to the whole thing.

X Int. 50. Have you a patent for the folding tripod?

A. I don't know whether the feet are patented separate or not.

X Int. 51. Do you know whether the adjustable breast pieces on the bust are patented or not?

A. I do not know whether they are patented separate or not. Mr. Perkins has these patents in his possession, and I have not seen them for a long time.

X Int. 52. Do you know whether the adjustable shoulder pieces are patented separately or not?

A. I do not know; I know that they are described in one of the patents.

X Int. 53. Did you ever make, in the period between Jan. 1, 1884, and April 27, 1886, any other styles of dress forms than the three which have already been spoken of, namely, plaintiff's complete figure, plaintiff's skirt and the skirt with wooden posts?

A. I did not.

X Int. 54. How long did you keep up the various agencies which you established?

A. Very many of them are kept up till to-day. Some are kept up till to-day, others are not.

X Int. 55. The proportion of complete figures which you sold before January, 1886, was small, was it not, compared with the number of skirt forms?

A. Yes, it has always been small compared with the skirt.

X Int. 56. What is the reason for that?

A. I don't think I know. The price of one is $3.50, and the other $6.50; that would make some difference.

X Int. 57. You say that the proportion of complete figures
211 sold by you before April, 1886, was quite small compared with the number of skirts. Can you give any idea as to what the proportion was?

A. I should suppose about a quarter part as many full figures as skirts.

(Redirect by Mr. PERKINS:)

R. D. Int. 58. What mark or marks, if any, did your dress forms have, at the time you began their manufacture, to indicate that they were patented?

A. The same marks that appear on the feet of Exhibit Plaintiff's Skirt.

R. D. Int. 59. State whether or not you always continued to mark them in that way.

A. I have.

R. D. Int. 60. Did you mark them in any other way, or upon any other part of the figure?

A. No; the iron foot has always been marked this way. It is on the casting, the figures are.

R. D. Int. 61. Will you state the price at which you sold the skirt form during the period in question, and the cost of the same?

A. We sold the skirt at $30 a dozen, a part of which was subject to a discount, as stated before. The cost of the skirt was ninety-five cents apiece.

R. D. Int. 62. Please state the cost and selling price of the full form during the period in question.

A. The cost was $2, and the selling price $4.50 apiece.

R. D. Int. 63. Upon what sum did you figure the discount referred to in your last answer but one?

A. On the $30 a dozen for skirts, and on the $4.50 apiece for full figures.

R. D. —. 64. How does the cost of the skirt portion of the full figure compare with the cost of the skirt, when made alone?

A. I think I answered that when I stated that the skirts cost ninety-five cents; there is no difference in the costs.

(Cross-examined by Mr. DANE:)

212 R. X Int. 65. You have books, I suppose, to show what the selling price and the cost of the skirt form and full figure was, during the period in question?

A. Yes, sir.

(Defendants' counsel moves to strike out the testimony of this witness, as to the cost and selling price of the skirt form and full figures in question, on the ground that the same is not the best evidence.)

(Motion denied.)

R. X Int. 66. Have you any memorandum with you showing the items of costs of the skirt and full figures which was made by you, with the aid of your books? and, if so, please produce it.

A. I find I have a memorandum here, which was made in 1887, and it was made from actual cost at that time.

R. X Int. 67. Is that the memorandum on which your previous testimony has been based?

A. It was, by adding ten cents to my memorandum of 1887, for previous to that the cost was a little more.

R. X Int. 68. How did you arrive at the ten cents?

A. I added it to the cost of 1887, because I knew that it cost more before that time. I got them made by the piece, and the cost was more before 1887.

R. X Int. 69. Have you any memorandum of the cost of full figures before that time?

A. I have not with me.

R. X Int. 70. Did you figure the cost of full figures in the same way as you testified that you figured the cost of the skirt?

A. No, sir; I could not say that I added just ten cents, but I know that I made the cost high, fully enough; I can swear to that.

R. X Int. 71. These cost prices were not taken by you from your books which you kept at the time during the period in question, were they?

A. No, sir; I should say my books were taken from me. I made the estimates and put them into my books.

R. X Int. 72. Do these estimates of cost that you have made include anything more than the price of material and the cost of making it, upon skirt form by the piece?

A. Yes, sir; five cents apiece for incidentals.

213 R. D. Int. 73. Will you produce your books and papers containing the accounts of your dress-form transaction during the period in question, for the inspection of the defendants' counsel whenever he may desire, at any hearing of this cause?

A. Yes, sir.

R. D. Int. 74. Can any more accurate statement of the cost be obtained from any source than that which you have already made?

A. No, sir; I don't see how it can be possible, unless there might be some question as to the five cents for incidentals. I can tell all the absolute ones. I think the incidentals are very liberal; I know they are.

Adjourned to day to be named.

BOSTON, MASS., *July* 9, 1888.

Hearing continued.

Present, Messrs. Perkins and Tucker, for plaintiff; Mr. Dane, for defendants.

Adjourned to July 10, 9.30 a. m.

BOSTON, MASS., *July* 10, 1888.

Hearing continued.

Present, Messrs. Perkins and Tucker, for plaintiff; Mr. Dane, for defendants.

Adjourned to July 11, 9.30 a. m.

BOSTON, MASS., *July* 11, 1888.

Hearing continued.

Present, Messrs. Perkins and Tucker, for plaintiff; Mr. Dane, for defendants.

The following stipulation was consented to and entered of record:

336. Law.

It is stipulated by the counsel for the respective parties that the evidence taken and to be taken herein may be used, so far as
214 the same is applicable and admissible, upon the final hearing in the cases, number 316 law, and 538 equity, in this court, with the same force and effect as if originally taken in said cases. It is further stipulated by the counsel for the respective parties that the evidence offered and to be offered in the cases, number 316 law, and 538 equity, in this court, may be considered as introduced in this case, so far as it is applicable and admissible, and with the same force and effect as if originally taken herein.

Adjourned to July 12, 9.30 a. m.

BOSTON, MASS., *July* 12, 1888.

Hearing continued.

Present, Messrs. Tucker and Perkins, for plaintiff; Mr. Dane, for defendants.

Adjourned to July 13, 9.30 a. m.

BOSTON, MASS., *July* 13, 1888.

Hearing continued.

Present, Messrs. Perkins and Tucker, for plaintiff; Mr. Dane, for defendants.

Adjourned to July 14, 9.30 a. m.

BOSTON, *Aug.* 2, 1888.

Accounting continued.

Present, Messrs. Perkins and Tucker, for complainant, and Mr. Dane, for defendants.

Complainant offers in evidence Complainant's Exhibit Defendants' Complete Dress Form, and also Complainant's Exhibit Defendants' Skirt Form, heretofore so marked by the committee.

(Defendants' counsel objects to the admission of the exhibits offered, as it does not appear that they are of the kind and combination introduced in evidence and referred to on final hearing, upon which the present decree is based, between the same parties, in case No. 538 in equity.)

215 Complainant's solicitor offers in evidence a certified copy of the evidence of complainant and defendant, used upon final hearing in said case, No. 538 in equity, which is marked Complainant's Exhibit Proofs, upon Final Hearing.

(It is consented that this record may be referred to and used without printing herein the same, as if originally introduced in this reference.)

Complainant's solicitor offers in evidence a certified copy of the pleadings, opinion and decree in the case of C. A. Morss, complainant, *vs.* Sam. M. Ufford *et al*, in the circuit court of the United States for the district of Massachusetts, which is marked Complainant's Exhibit Ufford Record.

(Defendants' solicitor objects to the admission of the evidence offered, as being inadmissible and incompetent, but consents that subject to such objection said record may be read and used as if originally introduced in this reference, without printing.)

Adjourned to Aug. 4, 9.30 a. m.

BOSTON, *Aug.* 4, 1888.

Testimony of plaintiff resumed.

Parties present as heretofore.

Mr. JOHN HALL, a witness produced by the plaintiff, sworn and examined by Mr. PERKINS:

Int. 1. What is your name, age, residence and occupation?

A. John Hall, age 57, residence Watertown, Mass., and occupation inventor and manufacturer.

Int. 2. Are you the patentee named in the patent in suit?

A. I am.

Int. 3. Were you in business with the complainant in the manufacture of dress forms before April 27, 1886?

A. Yes.

Int. 4. What styles of dress forms did you manufacture with him?

216 A. Those like the Exhibits Complainant's Skirt and Complainant's Complete Form.

Int. 5. What part of the business did you do?

A. I attended to the buying of stock and manufacturing.

Int. 6. For how long a period of time did you attend to the buying of stock and manufacturing?

A. About six years, ending April 27, 1886.

Int. 7. State, if you know, what was the cost to manufacture the skirt forms like Exhibit Plaintiff's Skirt, during the years 1884–1885, and until you left the business in 1886.

A. There were two kinds of skirt forms made; one with wood posts cost seventy-one cents each, and the other with iron posts cost $1.03 each.

Int. 8. Please give the items of the cost of each, and state when and how they were ascertained by you.

A. I took sufficient stock to make 100 forms with wood posts.

It required 250 pounds wire, which cost	$22 50
It took 300 notches, which cost	3 37
100 posts	2 75
68 lbs. casting for feet, 7 cents per lb.	4 76
88 lbs. $\frac{5}{16}$ wire, at 3 cents "	2 64
$2\frac{1}{2}$ gross screw-eyes	2 10
$\frac{1}{4}$ box tin	2 50
2 gross of tape	2 60
200 buckles	53
Rivets	12
$\frac{1}{4}$ gallon varnish	75
Wrapping paper and twine	1 50
Labor	25 00
Total	$71 12

The above items are for the wood-post skirts.

For iron-post forms the cost was same as above, with extra for posts	$12 25
Extra for feet	15 24
Extra labor	5 00
Total	$103 61

217 I made this calculation some time between July, 1885, and April, 1886.

Int. 9. Was there at any time during the years 1884, 1885, and 1886 any difference in the items of cost and those you have given?

A. There was a reduction in the cost of labor of five cents each in July, 1884, and a reduction in the cost of notches of two cents each about the spring of 1885. There was a reduction in the price of wire of $11\frac{1}{2}$ cents to $9\frac{3}{4}$ per pound about a year before I sold out.

Int. 10. Have you made any allowance in these estimates for waste of material in the process of manufacture?

A. I did.

Int. 11. What allowance? Upon what material have you made an allowance?

A. All material that there was any waste to—iron, wire, and tin.

Int. 12. Have you made any allowance for power, rent, or interest on capital invested?

A. I did not.

Int. 13. Where was the manufacturing done during the time you were engaged in it?

A. At same place that it is now.

Int. 14. Was there any office-room or store-room occupied by this business during that time?

A. No special office-room. Mr. Morss took it into his own office and store.

Int. 15. Were there any clerks employed for keeping accounts or other purposes?

A. None for that special business. They were Mr. Morss's regular clerks who did the work.

Int. 16. Did Mr. Morss employ any additional clerical assistance or use any additional store or office space after he took up the dress-form business and while you were connected with him?

A. No.

Int. 17. Do you know what was the cost of the dress forms like Exhibit Plaintiff's Complete Form during the time you were connected with the complainant? If so, please state what it was.

218 A. I do; it is something less than $2.

Int. 18. Can you state what the items are which make up the cost of the complete form?

A. I cannot now.

Int. 19. How and when did you ascertain the cost of the complete form?

A. When I was making them I had a memorandum book containing an itemized account of the cost. The book I am not able to find now. I made them up the same as I did the skirt; that is, by weighing and counting the stock for 100 forms.

Int. 20. Whether or not you recollect what the total of such items was? I mean approximately.

A. About one dollar and ninety cents.

Int. 21. Was the cost of the complete form more than $2 at any time after Jan. 1, 1884, and while you were in the business?

A. It was not.

Int. 22. Was it less than $1.90 at any time during that period?

A. It was not.

Int. 23. Did you have any correspondence with the Union Form Co. at any time while you were in the dress-form business? If so, about when?

A. I received a letter from them I think it was in the spring of 1885, asking if an arrangement could be made with me to combine the business. The letter I gave to Mr. Morss for him to answer. They suggested in their letter that I make some proposition to that effect; that is, to combine the business.

Int. 24. Have you made a search for that letter? If so, with what result?

A. I gave that letter to Mr. Morss for him to answer.

Int. 25. Have you seen it since?

A. I have not.

Int. 26. Do you know whether it is in your possession or control at the present time?

A. It is not.

Int. 27. Was any allusion to your patents made in the letter?

A. I don't remember. I think there was a reference to it, but I am not positive about it.

219 (Cross-examined by Mr. DANE:)

X Int. 28. By whom was the letter referred to by you as received from the Union Form Co. written or dictated, if you know?

A. I think it was signed Union Form Co., but am not positive in regard to that.

X Int. 29. What month in 1885 did you receive the letter referred to?

A. I am not able to tell the exact date; some time in the late winter or spring.

X Int. 30. How soon after receiving it did you hand it to Mr. Morss, and whether the Morss referred to was Charles A. or Everett?

A. The next day; it was Charles A. Morss.

X Int. 31. Please tell the court just what you said to Mr. Morss, and what Mr. M. said to you upon the occasion of your handing him the letter.

A. I told him there was a letter I had received from the Union Form Co. After reading it, he said he did not know as we wanted to combine with any one, that he had plenty of factory room and money to run the business ourselves.

X Int. 32. Did you or Mr. Charles A. Morss send a response in writing to the Union Form Co.?

A. I told Mr. Morss he had better answer the letter, which he said he would do. That ended the business so far as I was concerned.

X Int. 33. Then you knew nothing more about the matter than what you have indicated in your last answer about the matter referred to therein?

A. No, sir.

X Int. 34. Now, concerning the cost of skirt forms, given in answer to 8th Int., how did you make your calculation; was it by keeping an accurate book account of every kind of stock or material and part consumed in connection with the construction of said forms, by weighing such that required weighing, including the waste in forming parts thereof, including wrapping paper and twine consumed, money paid for all the time devoted to the constructing,

packing and shipping, or was a portion of it estimated?

220 A. Both; I took a book account of all the stock, including wrapping paper and twine. I also estimated on a portion of the stock.

X Int. 35. How about the period covered by the years 1884, 1885 and 1886? Are not a portion of the items given in answer to the 9th Int. estimated, instead of taken from books of account kept during the period referred to?

A. They were averaged.

X Int. 36. What allowance of waste of material in constructing the forms, and in what way did you arrive at the facts?

A. Two hundred and fifty pounds of wire will make 100 forms, after deducting the waste. It will average that.

X Int. 37. And the average was estimated, was it not?

A. Yes sir.

X Int. 38. In your items of cost of the construction of the skirt form in question you have made no allowance for rent, nor for the use of machinery, nor for insurance, nor for clerks and other assistance about the office and shipping department pertaining to the form business?

A. No.

X Int. 39. But such were required in the manufacture and disposition of such forms were they not?

A. Yes.

X Int. 40. Are you able to swear positively that the cost of the Hall form of complainant was less than $2 during the time you were with the complainant, as stated in your answer to the 17th Int.?

A. Yes: aside from the office and factory rent, and other items, referred to in Int. 38.

(Redirect by Mr. PERKINS:)

R. D. Int. 41. Please examine the exhibit casting and state during what time while you were connected with the complainant in the dress-form business that castings like said exhibit were continuously used with the wood-post skirts which you made.

A. For about two years previous to the time I sold out.

R. D. Int. 42. What style of foot was used with the wood-post standard immediately prior to the time you began the use of the foot having a casting like the exhibit casting?

221 — Defendants' solicitor objects to the question as immaterial and irrelevant, as such forms no part of the claim sued upon.)

(Question admitted and exception taken.)

A. A wood foot.

R. D. Int. 43. Were there any marks on the wood foot referred to?

A. The date of the patent, Oct. 12, 1880.

R. D. Int. 44. Any other word or mark than the date of the patent? If so, what?

A. There was manufactured by Morse & White, 75 Cornhill, Boston.

R. D. Int. 45. Whether or not the word "patented" was used?

A. I think the initials "pat." were used, showing that it was patented.

R. D. Int. 46. Whether or not the foot was continuously marked in the manner you have stated while used with the wood-post form?

A. It was.

R. D. Int. 47. Did you use any other foot than these you have

described, with the wood-post form, at any time while you were in the business, after January 1, 1884?

(Defendants' solicitor objects to the question as immaterial and irrelevant, having no bearing whatever on the accounting in this case.)

(Admitted and exception taken.)

A. No.

R. D. Int. 48. What winter did you mean in your answer to Int. 29? Was it the winter of 1884–5 or the winter of 1885–'6?

A. The winter of 1884–5 I meant.

JOHN HALL.

Subscribed and sworn to before me, this 4th day of Aug., 1888.

E. E. MARVIN,
Committee.

222 Examination of EVERETT MORSS resumed:

Int. 10. Have you examined the books of account relating to the dress form business during the period prior to the time it was purchased by the complainant, for the purpose of ascertaining what discounts were allowed upon dress forms sold during that time, and if so, what is the result of your examination?

A. I have examined the books of the complainant, and further, was acquainted with the books before this special examination. The discounts in general were similar to those given during the latter periods, but the average net receipts per form were greater during this period, from the fact that a larger proportion of forms were sold at the wholesale prices, without discounts, and at the retail prices than now. Taking the whole number of forms ever sold before April 30, 1888, the receipts were 14 per cent. less than as if we had realized the wholesale prices, while taking the number of forms sold from Nov. 16, 1886, to April 30, 1888, we realized 20 per cent. less than the wholesale rates, thus showing that the receipts in the earlier times were greater per form than during the equity period.

Int. 11. Compare, if you can, the cost of power, the rent of factory and store, the clerical services and incidentals during the period prior to the sale by Hall to the complainant with these items, as you have estimated them, during the period of the accounting in the equity cause.

A. The cost of items mentioned in this question can of course only be estimated, but I should say that the percentage to be added to the items to cover these expenses would certainly not be larger during this period than during the equity period, for the reason that superintendence and clerical work were done almost entirely by Mr. Hall and Mr. Morss, and that the power and space, as well as insurance and interest were no larger in proportion than they are now. In fact these items were so small a factor that Mr. Morss never considered it worth while to charge anything to Mr. Hall for them.

A. They were averaged.

X Int. 36. What allowance of waste of material in constructing the forms, and in what way did you arrive at the facts?

A. Two hundred and fifty pounds of wire will make 100 forms, after deducting the waste. It will average that.

X Int. 37. And the average was estimated, was it not?

A. Yes, sir.

X Int. 38. In your items of cost of the construction of the skirt form in question you have made no allowance for rent, nor for the use of machinery, nor for insurance, nor for clerks and other assistance about the office and shipping department pertaining to the form business?

A. No.

X Int. 39. But such were required in the manufacture and disposition of such forms, were they not?

A. Yes.

X Int. 40. Are you able to swear positively that the cost of the Hall form of complainant was less than $2 during the time you were with the complainant, as stated in your answer to the 17th Int.?

A. Yes; aside from the office and factory rent, and other items, referred to in Int. 38.

(Redirect by Mr. PERKINS:)

R. D. Int. 41. Please examine the exhibit casting and state during what time while you were connected with the complainant in the dress-form business that castings like said exhibit were continuously used with the wood-post skirts which you made.

A. For about two years previous to the time I sold out.

R. D. Int. 42. What style of foot was used with the wood-post standard immediately prior to the time you began the use of the foot having a casting like the exhibit casting?

221 (Defendants' solicitor objects to the question as immaterial and irrelevant, as such forms no part of the claim sued upon.)

(Question admitted and exception taken.)

A. A wood foot.

R. D. Int. 43. Were there any marks on the wood foot referred to?

A. The date of the patent, Oct. 12, 1880.

R. D. Int. 44. Any other word or mark than the date of the patent? if so, what?

A. There was, manufactured by Morss & White, 75 Cornhill, Boston.

R. D. Int. 45. Whether or not the word "patented" was used?

A. I think the initials "pat." were used, showing that it was patented.

R. D. Int. 46. Whether or not the foot was continuously marked in the manner you have stated while used with the wood-post form?

A. It was.

R. D. Int. 47. Did you use any other foot than these you have

described, with the wood-post form, at any time while you were in the business, after January 1, 1884?

(Defendants' solicitor objects to the question as immaterial and irrelevant, having no bearing whatever on the accounting in this case.)

(Admitted and exception taken.)

A. No.

R. D. Int. 48. What winter did you mean in your answer to Int. 29? Was it the winter of 1884–'5 or the winter of 1885–'6?

A. The winter of 1884–'5 I meant.

JOHN HALL.

Subscribed and sworn to before me, this 4th day of Aug., 1888.

E. E. MARVIN,
Committee.

222 Examination of EVERETT MORSS resumed:

Int. 10. Have you examined the books of account relating to the dress form business during the period prior to the time it was purchased by the complainant, for the purpose of ascertaining what discounts were allowed upon dress forms sold during that time, and if so, what is the result of your examination?

A. I have examined the books of the complainant, and further, was acquainted with the books before this special examination. The discounts in general were similar to those given during the latter periods, but the average net receipts per form were greater during this period, from the fact that a larger proportion of forms were sold at the wholesale prices, without discounts, and at the retail prices than now. Taking the whole number of forms ever sold before April 30, 1888, the receipts were 14 per cent. less than as if we had realized the wholesale prices, while taking the number of forms sold from Nov. 16, 1886, to April 30, 1888, we realized 20 per cent. less than the wholesale rates, thus showing that the receipts in the earlier times were greater per form than during the equity period.

Int. 11. Compare, if you can, the cost of power, the rent of factory and store, the clerical services and incidentals during the period prior to the sale by Hall to the complainant with these items, as you have estimated them, during the period of the accounting in the equity cause.

A. The cost of items mentioned in this question can of course only be estimated, but I should say that the percentage to be added to the items to cover these expenses would certainly not be larger during this period than during the equity period, for the reason that superintendence and clerical work were done almost entirely by Mr. Hall and Mr. Morss, and that the power and space, as well as insurance and interest were no larger in proportion than they are now. In fact these items were so small a factor that Mr. Morss never considered it worth while to charge anything to Mr. Hall for them.

Int. 12. Were the plaintiff and Charles A. Morss partners in business prior to the time the former sold to the latter?

A. So far as concerns the dress forms, yes, to all intents
223 and purposes—that is to say, Mr. Hall put in the patents and Mr. Morss advanced the necessary capital, although the business was all conducted in Morss's name, the profits being divided equally between Mr. Hall and Mr. Morss.

Int. 13. Have you made any search for the letter from the Union Form Company to Mr. Hall, referred to in his testimony to-day, and if so, with what result?

A. Yes, I made a search and could not find any such letter.

Int. 14. What expenses of selling goods other than those mentioned in the expenses of business, enumerated in your testimony in the equity case, were incurred during the period in question and subsequent to Jan. 1, 1884?

A. None.

(Cross-examined by Mr. DANE:)

X Int. 15. In stating the items in this case to-day, you have estimated many of them, instead of taking them from book accounts kept by you or the complainant herein, have you not?

A. Yes, for the reason that I knew more about the cost from my experience than I could get out of the books. I wish to correct this answer, which was given under a misunderstanding, and say that I have not testified as to the items, but simply compared the general expense account, which was never on the books, with an estimate during another period.

EVERETT MORSS.

BOSTON, *Aug.* 2, 1888.

Accounting continued.

Present, Messrs. Perkins and Tucker, for complainant; Mr. Dane, for defendants.

Complainant offers in evidence Complainant's Exhibit Defendants' Complete Dress Form and also Complainant's Exhibit Defendants' Skirt Form, heretofore so marked by the committee.

(Defendants' counsel objects to the admission of the exhibits offered, as it does not appear that they are of the kind and combination introduced in evidence and referred to on final hearing, upon which the present decree is based between these same parties, in case No. 538 in equity.)

224 Complainant's solicitor offers in evidence a certified copy of the evidence of complainant and defendants used upon final hearing in said case, No. 538 in equity, which is marked Complainant's Exhibit Proofs upon Final Hearing.

(It is consented that this record may be referred to and used, without printing herein, the same as if originally introduced in this reference.)

Complainant's solicitor offers in evidence a certified copy of the pleadings, opinion and decree in the case of C. A. Morss, complain-

ant, *vs.* Sam. M. Ufford *et al.*, in the circuit court of the United States for the district of Massachusetts, which is marked Complainant's Exhibit Ufford Record.

(Defendants' solicitor objects to the admission of the evidence offered as being inadmissible and incompetent, but consents that subject to such objection, said record may be read and used as if originally introduced in this reference, without printing.)

HARTFORD, *Aug.* 22, 1888.

Hearing on reference continued.
Parties present as heretofore.
Adjourned to Aug. 23, 1888.

HARTFORD, *Aug.* 23, 1888.

Hearing on reference continued.
Parties present as heretofore.
Adjourned to September 5, 10 a. m.

225 Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS *vs.* WM. H. KNAPP *et al.* } No. 538. In Equity.

Accounting before E. E. Marvin, master *pro hac vice*.

Present, C. F. Perkins for complainant, and J. K. Beach for defendants.

WM. H. KNAPP, a witness produced by the complainant, sworn:

Int. 1. What is your name, age, residence and occupation?

A. My name is William H. Knapp, age 25 years, residence Brooklyn, N. Y., and my occupation is manufacturer and commission merchant.

Int. 2. Are you one of the defendants in this case?

A. I am; yes, sir.

Int. 3. Have you now with you the books of account of the Union Form Co., which were kept during the period from the 16th day of November, 1886, and to the 30th day of April, A. D. 1888?

A. I have account books which I think will be sufficient evidence, and contain all the true facts in this case.

Int. 4. Will you please produce them, and state how many dress forms appear to have been manufactured during the period mentioned in the last question?

A. I have not them all with me—none later than the 11th of May, 1887.

Int. 5. Will you produce the others at the afternoon session?

A. The balance of them are in New York, and I cannot do it.

226 Int. 6. Please state how many dress forms appear by the books which you have with you to have been made or sold

during the period referred to in Int. 3, that is, from the 16th of November, 1886, up to as far as you have got them.

A. Two hundred and eighty-seven in this book.

Int. 7. Please state, if you know, how many dress forms you made or sold during the period mentioned in Int. 3.

Adjourned to May 8, 10.30 a. m.

NEW HAVEN, *May* 10, 1888.

Evidence of WM. H. KNAPP, on part of plaintiff, continued.

Parties present as before.

A. There were 3,364 full figures and 2,628 skirts, according to a statement which I hold in my hands, which has been taken from the books.

Int. 8. Please state what you mean by full figures, and what you mean by skirts.

A. A full figure is a combination of skirt and bust, and a skirt form is simply the skirt.

Int. 9. Will you state what kind of full figure and what kind of skirt you refer to when you have used these terms?

A. A full figure is like the exhibit here, Defendants' Complete Dress Form, and the skirt is like the exhibit skirt, hereafter to be produced.

Int. 10. Who made the written statement from which you have taken the figures given in answer to Int. 7?

A. It was made under my own direction.

Int. 11. Please give the name of the person who wrote the statement referred to.

A. I cannot give it; it was written down-stairs. I saw it in lead-pencil; I cannot tell who copied it.

Int. 12. Who made the original pencil statement?

A. Mostly it was made by Mr. Spock, in my employ.

Int. 13. Just how did he proceed to make up that statement?

A. He took up item by item.

Int. 14. From what books?

A. There were only two books, a journal and invoice book.

Int. 15. Have you compared the copy with the original pencil statement?

227 A. Yes, sir.

Int. 16. Are you able to swear that it is an exact copy?

A. Yes, of the pencil statement; I have not compared that with the books.

Int. 17. If you have the pencil statement, will you produce it?

A. It was destroyed.

Int. 18. Did you compare this statement with the pencil statement alone, or were you assisted by some one, and if assisted, by whom?

A. I compared it alone.

Int. 19. What supervision of Mr. Spock's work did you exercise?

A. I simply told Mr. Spock to take the journal and invoice book, that contained the itemized form accounts and invoices, and to make a complete and exact copy of them.

Int. 20. Then you were not present while Mr. Spock was making the abstract from the books of account, were you?

A. Yes, sir, I was, and explained from time to time certain items that he did not understand.

Int. 21. Did you leave him to make up the account with only such assistance from you as you gave him, when he asked you questions?

A. Mr. Spock is one of our book-keepers, and has charge of the figure business, that is, the book-keeping part of it, and is thoroughly conversant with all appertaining to it, having originally made most of the entries in the books. That was the only assistance I gave him.

Int. 22. Does your invoice book show anything relating to the manufacture of dress forms but the amount of material which was put into them?

A. No, sir.

Int. 23. By what means do you distinguish the material which was put into dress forms from that which was put to other uses? I mean from the invoice book.

A. The invoice book shows nothing but a reprint of the bills which were sent to customers with the goods sold to them.

Int. 24. Do I understand that this book which I hold is the invoice book of the Union Form Company?

228 A. That is not an invoice book; that is a journal.

Int. 25. Then you have not got the invoice book here with you?

A. No.

Int. 26. Have you made any other style of dress form than those you have mentioned during the period from Nov. 16, 1886, to April 30, 1888?

A. We have.

Int. 27. Have you made any other style that was adjustable?

A. We have.

Int. 28. Will you please describe it?

A. We have made other styles, but nothing involving the movement in question.

Int. 29. Did you make any other style than these shown by the exhibits, prior to Jan. 1, 1888?

A. We did; yes, sir.

Int. 30. How long prior?

A. I could not tell you at this time.

Int. 31. Did you make any prior to Nov. 1, 1887?

A. I could not say positively.

Int. 32. Are these book which are before me the books of account of the Union Form Co., or of some other partnership?

A. These books are the property of Knapp & Hague, who are the proprietors of the Union Form Co.; consequently, the books of the two concerns are identical. One is a New Haven book, and one a New York book; what is in the New Haven book you will find in a condensed form in the New York book.

Int. 33. Have the transactions of the Union Form Co. or any of

them, relating to the manufacture of dress forms like the exhibits, since the 16th day of November, 1886, been entered upon any other books or papers than these before me; if so, what books or papers, and where are they?

A. The papers have been destroyed, and the ledger of these journals we have in our possession, but where they are I cannot think; what I mean by that is, that the ledgers may be here or in New York. The ledger for the New York journal I know is in New York.

Int. 34. Will you make an estimate of the dress forms of the other styles than those shown in the exhibits which you made between Nov. 1, 1887, and Jan. 1, 1888?

229 (Defendants' counsel objects to the question as outside the limits of this inquiry. Question admitted and exception taken.)

A. I am not able to make such estimate at this time.

Int. 35. Were there more than 100 of them?

A. There probably was.

Int. 36. Were there more than 500?

A. I would not be able to say whether there was or not.

Int. 37. What was the occasion of your beginning to make other styles of dress forms than these you had made prior to Nov. 1, 1887?

(Defendants' solicitor objects to the question as immaterial. Question admitted and exception taken.)

A. To give the trade the benefit of a larger assortment of figures and adjustments.

Int. 38. Can you distinguish by the entries in the books before me the styles like the exhibits, from the other styles?

A. I cannot; no, sir.

Int. 39. To whom did you first sell the other styles?

A. That I could not state.

Int. 40. Did you not ship the first lot to the Domestic Sewing Machine Co.?

A. No, sir.

Int. 41. How do you know?

A. I recollect that fact distinctly.

Int. 42. How do you recollect that you did not ship to them, and don't recollect to whom you did ship?

A. Our policy has been to try new goods with the small trade.

Int. 43. And that is the only way by which you recollect that the first lot did not go to the Domestic Sewing Company?

A. Yes, sir.

Int. 44. So that your distinct recollection of the fact, as you term it, is a mere inference from your general policy?

A. It is no mere inference, but an adhering to our general policy.

230 Int. 45. Was the first style made, other than the exhibits, that which had the woven fabric tapes?

A. I could not say at present.

Int. 46. Will you prepare yourself to testify at the next hearing when you first made other styles than the exhibits, and give a description of the different kinds, and how many of each, and all you made during the period involved in this hearing?

(Defendants' counsel objects to the inquiry into the business of the defendants in respect of articles of manufacture not found to have infringed the patent and not as yet claimed to have infringed the patent. And he states that he has offered and now offers to make up from the books of the defendants an accurate statement of all the infringing dress forms which have been made and sold, and submits that until the said account is produced, and some foundation is made for claiming that it is not correct, the complainant should not be permitted to inquire into the business of defendants for no other apparent purpose than to find out matters which are not material to the issue, and he further states that the account already presented was very hastily prepared and was not offered, either by the witness or by counsel, as being an accurate account.)

(Complainant's counsel gives notice that he shall hereafter claim the statement to be made, called for in the last interrogatory.)

Int. 47. What directions did you give your book-keeper about separating the various styles of dress forms made by you in making up his accounts?

A. I gave him no special directions.

Int. 48. Do you know whether or not all styles of adjustable dress forms are included in that statement?

A. I do; yes, sir.

Int. 49. Are they?

A. No; they are not.

Int. 50. Have you excluded all but those like the exhibits?

A. To the best of our knowledge.

231 Int. 51. How did you distinguish them?

A. I don't know how he did distinguish them.

Int. 52. How should you?

A. I do not know that I could distinguish them.

Int. 53. Do you know that he did?

A. No.

Int. 54. How, then, do you know that the other style was excluded?

A. I do not know it.

Int. 55. What makes you think it was excluded?

A. I have not thought anything about it.

Int. 56. Then, so far as your knowledge goes, they are included?

A. No, sir; they are not.

Int. 57. Why should you have any opinion about it, when you say you have thought nothing about it?

A. From the fact that common sense would dictate that a man would give himself the benefit of a doubt.

Int. 58. Did you make any statement to Mr. Everett Morss, at any

time last fall, about the number of dress forms which you had manufactured during the last year, and if so, what was it?

A. No, sir; I did not. The year was not then complete.

Int. 59. Did you make any statement to him about the number of dress forms you had made during any period?

A. No, sir. I made a statement to him that we would probably make a certain quantity during the year of 1887; what that quantity was, I do not recollect at this time.

Int. 60. Was it as many as 5,000?

A. I have before stated that I do not recollect at this time.

Int. 61. Is your memory so vague upon it that you cannot say approximately what you stated to him?

A. It is.

Int. 62. Did you make any statement to Mr. Appleton of Brooklyn, or Mr. McPherson of Boston, at any time last fall, about the number of forms you had made?

A. These gentlemen were present at the time the statement was made to Mr. Morss.

Int. 63. You have not answered my question, and I repeat it.

232 (Defendants' solicitor objects to the question, unless it is limited to some point of time within the period of the accounting.)

Int. 64. Did you make any other statement to them than you made to Mr. Morss?

(Defendants' solicitor makes same objection. Question admitted and exception taken.)

A. Mr. Morss was present at the time. Whatever statements were made at that time, and what the statements were, I do not recollect at the present time; they were merely friendly conversational remarks, which were said in the presence of all of them.

Int. 65. I did not ask whether they were present when you made a statement to Mr. Morss, but whether you made a statement to them, or either of them, other than the statement you made to Mr. Morss, and I do not mean to limit you to the time when you met them together.

A. This was the only time I saw Mr. McPherson during the fall. I had several conversations with Mr. Appleton, but made no definite statements to him, about anything.

Int. 66. Will you please state what was the cost of the manufacture of the dress forms, which you have stated that you made during the period of the accounting?

A. I cannot answer that at present.

Int. 67. Will you state what were the receipts from the sales of dress forms mentioned in the last interrogatory?

A. I can only give the amount appearing on the statement presented at to-day's hearing, which is $20,303.75.

Int. 68. Do you know what is the cost of the manufacture of each form, approximately? And if so, please state what it is.

A. No, sir; I do not.

Int. 69. Have you ever made an estimate for Mr. Morss of the cost of manufacture of either the complete or skirt form? If so, what was it?

A. I never made such an estimate.

Int. 70. Have you ever made such an estimate for yourself or your partners, and if so, what was it?

233 A. I have not; no, sir.

Int. 71. Do you mean to give the magistrate to understand that after carrying on the business during the period of the accounting, that you have no idea of the approximate cost of either the full or skirt form?

A. I do.

Int. 72. Do you know whether anybody in your firm has any idea of the approximate cost of either the full or skirt form? If so, state who.

A. I do know that no one has any idea of either the cost or approximate cost of either the full figure or skirt form.

Int. 73. Has any one of the firm talked with you as to any estimate he has made of such cost?

A. They have; yes, sir.

Int. 74. State what was said to you, or what you said about it.

A. Just what was said to me I do not recollect, but questions relative to the profit of the form business I always made reply to, by saying that, while I did not consider the figure business, perhaps, a branch of the business that there was any great profit in at the present time, still I believed that the development of it would be profitable.

Int. 75. Please state definitely what estimate was made by anybody in your firm.

A. No estimate has ever been made by any one in our firm, we all having been satisfied with the growth and development of the business as an investment, and the question of profit has not been one of very great importance to the present time.

Int. 76. You say in answer to Int. 61 that some one had made an estimate of the cost, and in your last answer you say that no estimate has been made. How do you reconcile these two statements?

A. What I mean to say is that no one has made an estimate which has at any time been considered as a basis on which we could estimate the cost of the different styles of figures.

Int. 77. In Int. 63 I asked you what estimate was made, and in no way limited it to an estimate that was considered as a basis for anything. Please answer that question.

A. No one has made an estimate in my presence that was competent to do so, or had sufficient knowledge of the business to make an estimate.

234 (Complainant's solicitor objects to the answer as irresponsive, and repeats the question.)

A. No estimate was made in my presence.

Int. 78. Please state definitely what estimate was made by any

one in your firm. There is nothing in my previous question to limit it to an estimate made in your presence.

A. There was no estimate, to my knowledge.

Adjourned to May 14, 10 a. m.

NEW HAVEN, *May* 14, 1888.

Defendants' accounting continued.

Parties present as heretofore.

Wm. H. Knapp, defendant under examination, failed to be present, telegraphing disability.

On motion of complainant's counsel the following order is entered of record:

The defendants are ordered and directed to make and present to the master, on or before the 17th of May, at 10 a. m., a correct statement of the number of dress forms, like the Exhibits Complainant's Complete Dress Form and Defendants' Skirt Form, made by the defendants between the 16th day of November, 1886, and April 30, 1888, the names of the persons to whom the same were sold, the prices received therefor, and the cost of manufacture, stating specifically each item thereof, and to produce all books and papers containing any record of the transactions relating to the making and selling or transporting of all said dress forms, together with a statement of all the profits made and received by them in such manufacture and sale, to be sworn to by some officer or agent of the company having personal knowledge thereof.

Adjourned to May 17, 1888, 10 a. m.

NEW HAVEN, *May* 17, 1888.

Defendants' accounting continued.

Parties present as heretofore.

235 Defendants' counsel presents a statement in compliance with the master's order of May 14, which is marked Defendants' Statement.

Int. 79. In Schedule B, of defendants' statement, appears an estimate of the cost of manufacture. Will you please state who made this estimate?

A. I made the estimate.

Int. 80. When, how and how long were you engaged about it?

A. I commenced on it last Friday to look up the prices of the material from the bills, and also on Saturday, Monday afternoon and Tuesday and Wednesday weighed the different parts of the figures and computed the costs. I was four days and a half.

Int. 81. For what period of time did you examine the bills from which you took the costs of material?

A. I examined the bills for the entire period of the equity suit, and where there was any wide range in the prices I averaged them.

Int. 82. Did you estimate the profit, which you have shown in your statement, on the basis of the wholesale price?

A. That is what it can be called; we only had one price.

Int. 83. Have you never retailed any goods during the period of the accounting?

A. No, sir.

Int. 84. Have you never varied the price to dealers?

A. Only in cases where we have made special alterations for them, and these are very few.

Int. 85. Did you sell dress forms to S. N. Ufford & Son at the same prices at which you sold them to the Domestic Sewing Machine Co.?

A. Yes, I think so; you can tell by looking at the schedule. (After looking at the schedule, the witness again answers yes.)

Int. 86. Then you wish me to understand that you made no difference in the terms of sale, or in the discounts which affected the net receipts to you, whether you sold one form or a large number of them?

A. Yes, I do.

Int. 87. You have all your books here bearing on this statement?

A. Yes, sir, I have.

236 (Cross-examined by Mr. BEACH:)

X Int. 88. Who paid the freight on these goods which were shipped direct from your New Haven factory?

A. The customers.

X Int. 89. Did you make any freight allowances?

A. None that would amount to anything. We did, perhaps, in some few cases, where there was a question of damage.

X Int. 90. As the account now stands, have you personally compared defendants' statement with defendants' books of account?

A. I have; yes.

X Int. 91. And are you able to say that the same is correct, of your own knowledge?

A. To the best of my knowledge and belief, it is.

X Int. 92. And have you with you, now, all the books which you used in making up that account, and which you used in making the comparisons referred to?

A. I have; yes, sir.

X Int. 93. Have you with you the bill books from which you took the cost of material?

A. I have; yes, sir.

Adjourned to May 21, 9.30 a. m.

BOSTON, MASS., *May* 21, 1888.

Accounting continued.

Parties present as heretofore.

CHARLES A. MORSS, the plaintiff, sworn and examined by Mr. PERKINS:

Int. 1. What is your name, age, residence and occupation?

A. My name is C. A. Morss, age 65, I reside in Boston, and my occupation is wire-work manufacturer.

Int. 2. What was the cost of the manufacture of the skirt and full-dress forms, during the period of this accounting, *i. e.*, from Nov. 16, 1886, to April 30, 1888?

A. From November to January 1, 1887, it was ninety-five cents; since that, eighty-five cents for the skirts. For the full-dress forms before Jan. 1, 1887, the estimated cost was $2 each; since then it is $1.85.

237 Int. 3. At what price did you sell them during the said period?

A. The skirt forms at $30 per dozen, and the complete figure at $4.50 apiece, part of them subject to a discount of 25 per cent. or less.

Int. 4. What proportion of the reduction in the cost of the full form was made upon the skirt portion of it?

A. The cost of the skirt was reduced more than that on the bust. I should say two-thirds of the reduction was on the skirt; on the bust the work was all skilled labor, and there was no chance to reduce it.

Int. 5. What proportion of the profit of the whole dress form was made on the skirt portion?

A. I should think about two-thirds of the profit was made on the skirt.

Int. 6. Were your goods continuously on the market during the period of this accounting?

A. Yes, sir; they were.

Int. 7. Who had charge of the introduction and sale of them during that period?

A. Mr. Appleton.

Int. 8. Have the defendants' goods been on the market during that period or some part of it?

A. They have, about all the time.

Int. 9. Has there been any competition, between you and the defendant on prices, during that period?

A. There has. They have reduced the price of their full figure, for which they got and we got $4.50 for, to $4.

Int. 10. How about competition on the prices of skirts, if any?

A. I don't know as they have reduced their prices on that.

Int. 11. Please examine the defendants' statement, and particularly the items of the cost of manufacture, and state what you know about these items, if anything.

A. The first item of wire he puts down at 7⅞ per pound, and that is 40 per cent. higher than the price of such wire to-day. It is a trifle lower, wire is to-day, than it was a year ago. At the prices of a year ago the prices given in this statement are 30 per cent. above the market price. Bronze is charged at ten cents. That is at least 50 per cent. higher than it ought to be. I used a great deal of bronze, and consider myself a judge of it.

238 He charges a man a day to make six forms at $3. Common labor does not cost $3 per day. That is a foreman's price on such kind of work.

There are many other items which I believe are too high, but I am not prepared to swear to them.

Adjourned. Time to be named hereafter.

HARTFORD, CONN., *July* 4, 1888.

The correspondence hereinafter annexed, in reference to further hearings in said matter, to wit:

BOSTON, MASS., *July* 3, 1888.

E. E. Marvin, Esq., clerk of U. S. court, Hartford, Conn.

DEAR SIR: As you know, I have been corresponding with Mr. Beach about agreeing upon some time for further hearings in Morss *vs.* Knapp. He decided that he could not go on before the 4th of July, and ascertaining that your vacation would not begin until August 9th, I wrote and asked him if he would agree to Monday, July 9th. In reply Mr. Beach writes me that he cannot attend to it, as he is going away on his vacation July 12th and will be occupied until then, and asks me to make arrangements with Mr. Dane, of New York, about further testimony. I went to New York on Saturday last and saw Mr. Dane and told him what Mr. Beach wrote. He said that it was the first that he had heard that Mr. Beach would not attend at the taking of testimony, and said he had engagements which would make it difficult for him to attend, but would try to arrange for the last of this week or the first of next. I had arranged with several witnesses to hold themselves in readiness to be called at any time after the 4th of July, when it would suit the convenience of Mr. Beach and yourself. If Mr. Beach chooses to leave in this way to go upon his vacation, and Mr. Dane is willing to let every other matter take precedence of this, I don't feel called upon to make any further effort to arrange a time for them. I would like to have you fix Monday or Tuesday of next week, if convenient for you, to take further testimony, at which time I shall close my part of the cases. Mr. Beach will be at home on those days, and if he sees fit may attend. If either of them
239 ask me in the meantime to fix any other days in lieu of these named, I shall cheerfully do so, provided it meets with your approval. Under the ruling of Judge Shipman, on the motion of Mr. Beach to dissolve the attachment in the last law case, I understand we are entitled to an account from the defendants in the equity case concerning all the dress forms made since the date of the decree, and which infringe on the patent in suit. We would, therefore, like to have you issue an order to the defendants, requiring them at the next hearing to produce specimens of all styles of dress forms made and sold by them since the date of the decree, in order that you may determine whether they come within the scope of the decree. I prefer to have the hearing take place in Boston, but leave that to you. Will you please notify Mr. Beach of the time and place of hearing? and oblige,

Yours, truly, CHARLES F. PERKINS, J.

(Dictated.)

NEW YORK, *July* 3, 1888.

MORSS
vs.
KNAPP.

SAME
vs.
UNION FORM CO.

E. E. Marvin, clerk U. S. circuit court, Hartford, Conn.

MY DEAR SIR: As Mr. J. K. Beach is about to absent himself from home on his summer vacation, leaving, as I am informed, next week, he wishes me to appear for defendants before you on the accounting in the cases above entitled. Mr. Knapp has also called upon me for the same purpose, and Mr. Perkins, on the part of complainant, has called to ascertain my convenience in the matter. But I find that I cannot at this date fix upon a time definite to attend, for the following reasons: 1st. I am now engaged in taking testimony here which will require my time for the remainder of this week; and 2d. I am booked for Ogdensburg, N. Y., next week, for an examination in a suit which has been already twice adjourned for my convenience, owing to my engagements in taking testimony in the Seibert lubricator suits, necessary for a special session and hearing before the judges of the third circuit and one of the justices of the supreme court, sitting together.

240 The Ogdensburg case is likely to occupy fully two weeks, and immediately thereafter I am to take and close proofs in the case of Browning *vs.* Farren Bros. Co. of your State, my time in the latter case having been already extended, with the understanding that I close before August 1st, and thus you will see that I cannot conveniently attend any session during the present month, but no doubt can be present during the fore part of August. I understand, however, that Mr. Morss, complainant, who has testified and left for Europe, is wanted for cross-examination, and defendants insist that he must be produced before the matter of accounting is closed.

From the explanation given me, I should conclude that it would be necessary that he (Morss) be produced. I shall notify Mr. Perkins of my inability to proceed this month, and of my notice to you.

Very respectfully, JOHN DANE, JR.

being presented to me and read, I passed order written below and mailed a copy of the same to Mr. Beach, Mr. Dane, and to Mr. Perkins:

Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS
vs.
WM. H. KNAPP *et al.* } No. 538. In Equity.

To the defendants:

You are hereby ordered and directed to produce before the master at the next hearing in the accounting pending herein, to be held at the office of Charles F. Perkins, Esq., 82 Devonshire street, Boston, Massachusetts, on the 9th day of July, 1888, at 10 o'clock a. m., specimens of all styles of dress forms made and sold by you since April 28, A. D. 1888, being the date of the interlocutory
241 decree in this suit, that I may determine how many and what of said specimens are within the scope of the said decree.

Dated at Hartford, this 4th day of July, A. D. 1888.

E. E. MARVIN,
Master pro hac vice.

BOSTON, MASS., *July* 9, 1888.

Defendants' accounting continued by order of master, dated July 4, 1888.

Present, Mr. Perkins, for complainant; Mr. Dane, for defendants.

Mr. APPLETON, a witness produced by the complainant, being duly sworn, testifies in reply to interrogatories as follows, viz.:

Int. 1. What is your name, age, residence and occupation?

A. R. R. Appleton, 35 years of age, residence Brooklyn, N. Y., and I am the general agent for the Wheeler & Wilson Manufacturing Co.

Int. 2. Are you acquainted with the defendants in this case, or either of them? If so, which, and how long have you known him?

A. I have known Mr. Wm. H. Knapp something over two years.

Int. 3. Have you had any conversation with him at any time concerning the number of dress forms made by him during the period of this accounting, or any part of it? If so, state what it was, and where it first took place.

(Objected to as immaterial; admitted and exception taken.)

A. Yes, several conversations. I believe the first was about Oct. 6, 1887, when he called at my store and proposed that Mr. Morss should take up the manufacture of his goods on a royalty basis. He stated at that time that his sales were large, but gave no statement as to amount. I told him that I thought I could get Mr. Morss to consent to such an arrangement, but it would be necessary for Mr. Knapp to make an exhibit of his business to
242 Mr. Morss; whereupon he agreed to meet Mr. Morss in Springfield and exhibit his books and cost sheets of the prime cost of manufacture. He desired my presence and that of Mr. E. M. McPherson. I stated that I would write to Mr. Morss and make the appointment, and Mr. Knapp said he would return in a few

days for the answer, when Mr. Morss wrote me that he expected to be in New York the following week, and requested the meeting to take place there.

Mr. Morss failed to come, but sent his son and Mr. McPherson. The meeting took place in the Astor house, I think, Oct. 18, 1887; could tell positively by referring to my letter book. Mr. Knapp was present, and stated that he had made over 10,000 forms during the past year, the business of which amounted to over $40,000, and that he would not take less than $25,000 for his business. Finally, however, he agreed to place his business in the hands of Mr. Morss, on a royalty basis of 25 per cent. on the net profit to manufacture. He stated further, his complete figures sold at wholesale for $4 apiece, which gave him at that time over $1 profit each. It was arranged that this should be laid before Mr. C. A. Morss for his answer.

After this interview Mr. Knapp called at my office. I told him that Mr. Morss would agree to the royalty proposition if he (Knapp) could make it clear to Mr. Morss that the amount of business heretofore stated, had actually been done. He (Knapp) thereupon agreed at that time to come to Boston, submit his cost sheets and books, and go before a notary and make affidavit as to the accuracy of his statements made at the Astor House meeting, and reiterated the same statements to me at that time, all of which I embodied in my letter to Mr. Morss of about that date, appointing a meeting of Mr. Knapp and Mr. Morss in Boston.

The next time I saw Mr. Knapp he said he had been too busy to go to Boston, and we had no more conversations as to the number of forms he had made.

Int. 3. What did you do, if anything, touching the proposed trade or trades?

A. We did nothing, as Mr. Knapp stated he would not make the trade—he could do better with the Domestic Co.

Int. 4. Are you acquainted with the two exhibits representing the defendants' forms, and if so, will you please state, if you know, when you first found them in the market?

243 (Objected to as improper, there being no evidence that the witness has seen the exhibits referred to, and it is, therefore, inadmissible.)

(Question admitted and exception taken.)

A. I have not seen the exhibits. I first saw Knapp's forms in the market, I think, about the beginning of the year 1886.

Int. 5. What experience have you had in the sale and introduction of dress forms, and how familiar are you with the trade?

A. I have had considerable experience. I first sold the Everett form in 1885, and immediately afterwards tried the Le Moine, and am now selling the Hall or Morss forms. I began to sell these in the summer of 1885. I sold in all about four dozen Everetts; I sold about one dozen Le Moine; I have sold over 20,000 Morss's or Hall's.

Int. 6. What has been your business connection with the Morss form during the period of the accounting?

A. I have been general agent for Mr. Morss.

Int. 7. In what markets have you sold your goods?

A. Principally in the United States.

Int. 8. In what parts?

A. All over.

Int. 9. What adjustable dress forms were in the market during the period of the accounting?

(Objected to as immaterial and irrelevant. Admitted by the master and exception taken.)

A. The Everett, Le Moine or Diamond, the Knapp, and the Hall or Morss.

Int. 10. What acquaintance have you with the dress forms made by the defendants? State specifically about the various styles made by them which you have met in the market.

A. The complete form is made with a papier-mache bust and non-folding skirt. It is adjustable in all ways, the bust being made in quarters. The skirt form is made the same as the skirt of the complete form, and this is adjustable in height and circumferentially. They also make folding skirt forms, and tape for waist bands or belts.

244 Int. 11. Of what material was the skirt form of the full figure made?

(Objected to, admitted, and exception taken.)

A. Wire.

Int. 12. To what portion of the complete figure was the adjusting mechanism applied?

A. To the waist and neck.

Int. 13. What competition, if any, existed in the market between the defendants' complete dress forms during the period of the accounting, and why?

A. The competition has been strong for the reason that they, the defendants, have sought my customers in the trade after I have made a demand for dress forms.

Int. 14. What advantages, if any, were common to the complainant's and defendants' forms which were not possessed by the others in the trade, during the period named?

A. Their adjustable points.

Int. 15. State just how, what features in common, and how these differed from the others?

A. The Everett form is adjustable in but one way—the split is down the middle. It is good shape when closed, but it is a homely figure, and only extended sideways. It was necessary to carry a number of different sizes in stock of these in order to fill the demand, because that one could not be made to fit only one or two sizes, could not be made larger or smaller. It was but little better than a solid figure.

The Le Moine is for the skirt only, without a waist band, adjust-

able only as to the size of skirt at the bottom, by a device of screw and braces.

The Diamond is also a skirt form only, but is adjustable at the waist and bottom, with braces and a sliding collar on a standard at both points.

Int. 16. Have you anything to add to the description of either form mentioned in your last answer? If so, please state it.

A. The Le Moine was a skirt form only, but is not now being made at all, and consequently is not in the trade. When expanded it was drawn back into place by rubber bands, which soon gave way and made the form useless.

245 Int. 17. What features did you find in common in the complainant's and defendants' dress forms?

A. Their adjustments.

Int. 18. Please specify the adjustments to which you refer.

A. The braces, by which the form is made large or small at each end. Knapp uses a screw device for the operation of the braces, while in the Hall the same result is obtained by a sliding collar.

Int. 19. What results are common to the plaintiff's and defendants' dress forms?

A. They can be both made to fit almost any figure.

Int. 20. At the time the defendants' forms were introduced into the market, what proportion of complainants' complete figures to the skirts were you then selling?

(Objected to as immaterial. Admitted and exception taken.)

A. About one-fifth.

Int. 21. What proportion were you then selling in New York?

A. About the same rate.

Int. 22. What proportion are you now selling there?

(Objected to as immaterial. Admitted and exception taken.)

A. About one twenty-fifth. For instance, in Brooklyn, where Mr. Bristow is selling the Knapp form, I seldom ever sell a complete form.

Int. 23. Are there any sections of the country where the defendants' goods are not being sold in competition with complainant's? If so, state where, and what is the proportion of full figures to the skirts which you are now selling in such places?

(Objected to as immaterial. Admitted and exception taken.)

246 A. In the Western cities, Chicago, St. Louis, Indianapolis, and in fact nearly all Western cities, defendants' goods have not been sold to any extent, and in these places about one-fourth of all my sales are full forms.

Int. 24. Have you examined defendants' statement, offered in evidence in this case? and if so, state if you know, what proportion of all the forms sold are complete forms, taking the total of the complainants and defendants.

A. Yes; about one-fifth.

Int. 25. During the period of the accounting what marks, if any,

did the forms of the complainant bear to indicate that they were patented?

A. The same marks that are now upon them, the same that are on the exhibit, marked Complainant's Skirt.

Int. 26. What marks did the wooden-post forms bear, if any, to indicate that they were patented?

A. The same marks, if I remember correctly, that are shown on this exhibit.

Int. 27. On what part of the dress form did they appear?

A. On the standard and on the casting.

Int. 28. What methods of selling were adopted by the manufacturers of the several kinds of dress forms, to which you have referred in your deposition, and how did they differ from or resemble each other?

A. The Everett form was made by a man named Norris, and it had only been sold around New York city and vicinity to dealers and the principal sewing-machine stores.

The Diamond form is manufactured by the Le Moine Manufacturing Co., and is sold by the Fowler Manufacturing Co., manufacturers of spring beds. The Fowler Manufacturing Co. have agencies for their beds throughout the country, to whom they send Diamond forms to be sold on installment in the same manner in which beds are sold by them.

The sale of the Diamond form is almost entirely confined to this channel of trade by the agents of the Fowler Manufacturing Co.

When I took hold of the Hall forms I had them indorsed and recommended by the fashion publishers of New York, namely: the Butterick Publishing Co., James McCaul & Co., Demorest,
247 and S. T. Taylor. These publishers recommended their pattern agents to sell our forms. I advertised the forms in nearly all the publications issued by these fashion companies and distributed by their respective agents.

The Domestic Machine Co., being general agents for Knapp's forms, and also being fashion publishers, were familiar with my methods. Through their traveling men they have sought, in a great measure, to introduce the Knapp forms to the fashion agents or pattern agents selling the Hall forms.

(Cross-examined by Mr. DANE:)

X Int. 29. Please state the month and year when you began to sell the Hall forms.

A. July, 1885. They were the first forms I ever had from Mr. Morss.

X Int. 30. How many did you sell during that year?

A. I cannot say.

X Int. 31. How many did you sell in the following year?

A. I should judge, about 12,000.

X Int. 32. But you are not absolutely certain?

A. No.

X Int. 33. How much in the six months later?

A. That would be from July, 1887, to January, 1888. Is that your question?

X Int. 34. Yes, sir.

A. I should say in the neighborhood of 12,000.

X Int. 35. But you are not absolutely certain concerning this number?

A. Not without referring to my books.

X Int. 36. How do you know that defendants' forms are not sold in competition with complainant's forms in the cities of Chicago, St. Louis, and Indianapolis and other cities in the West?

A. From reports from my travelers, who state that defendants' forms have not been sold in these cities to any extent, mainly on account of the cost of transportation.

X Int. 37. You are now testifying from hearsay, are you not?

A. I am answering the question as well as any business man can answer it who depends upon his employees for such facts,
248 this fact having been given me by my brother, who recently made a trip throughout the entire West.

X Int. 39. Answer objected to as irresponsive, and question repeated.

A. I have not visited these cities myself, and depend upon the reports of my brother, who has.

X Int. 40. Same objection, and question repeated.

A. I would like to know if what one's employees tell him is hearsay.

X Int. 41. I will now ask if you have any knowledge of what has been done concerning competition in the West, pertaining to the sale of complainant's and defendants' dress forms, other than that told you by others?

A. The only information I have is derived from my travelers and the various customers who come to New York to buy goods.

X Int. 42. Then, as a matter of fact, you acquired no personal knowledge of the matters testified to in response to the 23d Int. of your direct examination?

A. I consider the answers given as covering all the points, and are what every business man depends upon.

X Int. 43. If you visited Chicago and St. Louis in person at any time during the period since you began to sell complainant's forms, tell the court just the condition of matters pertaining to the sale of such forms, including competition.

A. I have not personally visited either of these cities.

X Int. 44. Is not the Diamond form, concerning which you have testified, of a character adapted to be expanded and contracted?

A. Yes.

X Int. 45. To an extent capable of being used for different-sized skirts?

A. Yes.

X Int. 46. Is not the Le Moine form capable of being expanded and contracted, diametrically?

A. Yes, around what would be called the hips; but it has no

waist band. It is just as large at the waist band or top when closed as when expanded.

X Int. 47. What do you mean by the waist band, referred to in your last answer?

249 A. I mean that there is no waist-band adjustment the same as there is in other figures, the vertical ribs all being permanently secured to a plate at the top, about three inches in diameter, and the expanding of the form only expands it from the hip line down.

X Int. 48. For what purpose do you understand the combination specified in the claim sued upon?

A. I am not familiar with the suit or the claims embodied.

X Int. 49. You mean by suit as given in your last answer, the suits in which you are now testifying, do you not?

A. Yes.

X Int. 50. Is it your understanding, in giving your testimony to-day, that the braces by which defendants' and complainant's forms are adjusted, to be new and novel at the date of the Hall patent, which forms the base of these suits in which you are testifying?

(Objected to as immaterial; ruled out and exception taken.)

X Int. 51. In referring to the braces used in both complainant's and defendants' forms, did you not, in alluding to them, consider that braces for expanding and contracting such and similar forms to be new and novel at the date of the complainant's patent?

(Objected to as immaterial; ruled out and exception taken.)

(Defendants' counsel respectfully submits that the question is entirely proper and admissible, unless complainant's counsel is ready to admit the incompetency of the witness, who since his production and while testifying was by Mr. Perkins said to be competent. That the question has been propounded for the purpose of, among other things, testing both the knowledge and competency of the witness now on the stand as to the forms, and for the reason stated, requests that the master rule that the witness respond to the question.)

250 (Complainant's counsel states that the novelty of the Hall patent is not in issue at this hearing, and no inquiry has been made of the witness on the direct examination touching the novelty of the braces of the Hall device at the date of the patent.)

(Defendants' counsel asks complainant's counsel whether he admits the witness now on the stand to be incompetent to testify concerning the structures in question, which includes among other things the braces, and if yea, the questions bearing thereon will be withdrawn.)

(Defendants' counsel says that I decline to answer the question because it seems to me to be immaterial whether he is competent or incompetent.)

(The master adheres to his prior ruling in regard to interrogatories Nos. 50 and 51, to which defendants' counsel duly excepts.)

X Int. 53. You stated, in substance, that defendants' forms were substantially the same as complainant's forms; now, in what respect?

A. On account of their being adjustable to fit all sizes.

X Int. 54. What peculiarity, if any, does the complainant's form in suit embody that defendants' form does not contain?

A. The plaintiff's form is constructed so as to fold up into a small package, which is a great convenience in transportation. The defendants' form is not constructed in this manner; in transportation it has to be crated, and occupies a great deal of room.

X Int. 55. State any other difference known to you embodied in the skirt form marked Plaintiff's Skirt, E. E. M., com., not found in defendants' forms, with which you have testified you are familiar, other than that of folding in a small compass.

A. Do you mean defendants' skirt form?

X Int. 56. Certainly.

A. The plaintiff's skirt form is made with a tape measure for the waist band and one for the hips, to facilitate adjustments.
251 It is adjustable at the waist and at the hips, and is so constructed around the bottom, in a manner necessary to the draping of train dresses. The feet are cast iron and are detachable. Defendants' skirt form is adjustable at the waist only, and to but a limited extent as compared with the Hall.

X Int. 57. And the means employed in the form in question by which such draping is accomplished, is the independent adjustment of the ribs through the medium of a series of braces that are so constructed as to slide upon themselves, each being formed in two parts; am I correct?

A. The hips and waist are adjustable by double braces opposing each other, and the lower part of the skirt is expanded to an extreme size by the means of braces, one sliding upon the other and held in place by a spiral coil binding them.

X Int. 58. And the braces, referred to in your last answer, are adapted for independent adjustment; that is to say, that any one or more of the ribs may be adjusted either towards or from the standard by said sliding braces, independently of each other; am I correct?

A. Yes, so far as adjusting from the normal size to an extreme size. The braces are independent, but are not used except when a very large size is wanted.

X Int. 59. Were you to drape the skirt form in question with a skirt provided with a trail, and wished to expand the lower portion of the rear part of the skirt form outwardly to fill such trail, then you would adjust the ribs that were adapted to fill the trail portion outwardly from the post, further than at the front and sides, would you not?

A. Yes.

X Int. 60. On removing the tapes or flexible bands from the form marked Plaintiff's Skirt, E. E. M., com., how would you proceed to adjust said form for the various sizes for which it is intended to be used?

(Objected to as immaterial, and admitted.)

A. If you remove the foot the form is incomplete and will not stand up. If I remove the tapes I cannot adjust the form, as they are a part of the form.

Adjourned to July 10, 9.30 a. m.

252 BOSTON, MASS., *July* 10, 1888.

Accounting continued.

Parties present as yesterday.

Mr. MCPHERSON, a witness produced by the complainant, sworn and examined by Mr. PERKINS:

Int. 1. What is your name, age, residence and occupation?

A. Ebenezer M. McPherson, age 51, residence East Boston, Mass., occupation merchant, dealer in bank safes, wire works, etc.

Int. 2. Have you at any time had any conversation with either of the defendants in this case touching the number of dress forms made by them during the period of the accounting? If so, when, where, and what was said?

A. I had a conversation with Wm. H. Knapp in the Astor house, New York, on the 18th of October, 1887, at which time he said that he or the Knapp Form Co. had made within a year previous to that date upwards of 10,000 forms, and the sales exceeded $40,000, and that he was ready to go before a magistrate and make an affidavit to that effect.

(Cross examined by Mr. DANE:)

X Int. 3. Was the conversation referred to in your last answer between Mr. W. H. Knapp and yourself personally?

A. Part of the conversation was conducted by myself, part by Mr. Everett Morss, part by Mr. R. R. Appleton, but all were present at the interview in the room at the same time.

X Int. 4. State what Mr. Knapp said to you on that occasion, and what you said to him.

A. It is impossible at this time to recall just what my questions were to Mr. Knapp. The interview lasted an hour or two, and I cannot remember every word of the conversation. We were there for the purpose of ascertaining the magnitude of Mr. Knapp's business, and I have stated in brief the result of the interview.

(All that part of the answer of the witness not directly responsive to the question is objected to as improper, immaterial and irrelevant.)

253 X Int. 5. Did Mr. Knapp upon the occasion referred to have with him any form or sample representing forms of a kind and character manufactured by him or his firm?

A. I did not see any.

X Int. 6. Did he present any patent granted for improvements in forms, upon the occasion referred to?

A. I did not see him present any.

X Int. 7. Did he tell you how many different kinds of forms were made by him or his firm, on the occasion referred to?

A. He stated that the number of complete forms he manufactured exceeded the number of skirts.

X Int. 8. The answer is objected to as irresponsive, and the question repeated.

A. He spoke of his manufacture of complete forms, and also of skirt forms, and said that the number of complete forms were in excess of the number of skirt forms.

X Int. 9. The answer is objected to, and the question repeated.

A. He did not tell how many complete forms he made, nor how many skirt forms; that is, he did not give the proportion of each in his "upwards of ten thousand."

X Int. 10. Did Mr. Knapp on the occasion referred to say that he made ten or fourteen different kinds of forms?

A. I did not hear him say that he made either ten or fourteen different kinds.

X Int. 11. Nor any other number?

A. I have no recollection of any definite number.

X Int. 12. Who invited you and the other gentlemen to New York for the interview referred to at the Astor house?

A. I was asked to go there by Mr. Charles A. Morss.

X Int. 13. And the invitation from Mr. Morss was the only one extended you to be present on that occasion?

A. I think so.

X Int. 14. Not quite positive?

A. Very likely Mr. Appleton might have said to me, "Let us go to the Astor house."

X Int. 15. Did Mr. Morss explain to you the purposes of the interview?

A. He did.

254 X Int. 16. State them.

A. To confer with Mr. Knapp about his business in dress forms, to learn its extent, and see what proposition he would make to sell out his business.

X Int. 17. Do you wish to be understood as saying that you and Mr. Morss and Mr. Appleton went to the Astor house for the purpose of ascertaining whether or not Mr. Knapp's business could be purchased?

A. That was one of the purposes of our visit.

X Int. 18. When Mr. Knapp explained, as you have stated, that he or his firm had made upwards of 10,000 forms, did he explain either to yourself, or to others in your presence, the particular construction and combination of parts which together constitute dress forms made by him or his firm?

A. The conversation related to the complete form and skirt form that he was then making, and was familiar to all of us in the room.

X Int. 19. The answer is objected to as irresponsive, and the question repeated.

A. I think I have given a complete answer to the question. He

did not go into any detail about the braces, screws, or parts, or nuts, posts, etc.

X Int. 20. Nor into details concerning their combination?

A. Not as to the 10,000 forms he had sold.

X Int. 21. Nor into details of others outside of the 10,000 referred to?

A. I don't recollect that he gave any details of any others.

X Int. 22. You have stated that you and your friends were familiar with the forms made by the defendants in this case. Had you personal knowledge of all forms, including different styles made by them at the time of the Astor-house meeting, about which you have testified?

A. I have personal knowledge only of those which I had seen. Whether others were made which I had not seen, I cannot say.

(Redirect by Mr. PERKINS:)

R. D. Int. 23. Did Mr. Morss or Mr. Appleton, in any con-
255 versation with you concerning the proposed interview at the Astor house, tell you particularly what Mr. Knapp proposed to present at the interview, or what preparations he had made for it?

(The question is objected to as improper, calling for statements made by others, one of whom has been called and another present who has testified, neither of whom have closed their testimony for the reasons stated. The question is inadmissible on the ground that it is hearsay, and also not the best evidence.)

(The question ruled out.)

R. D. Int. 24. Please state all the conversation which you had with Mr. C. A. Morss at the time you were invited to the interview at the Astor house.

A. I was informed by Mr. C. A. Morss that arrangements had been made for this interview with Mr. Knapp, and that Mr. Knapp would be expected, and had promised to come to the interview fully prepared with all the facts and figures as to his business. We were not authorized to make a bargain with Mr. Knapp, but were to discuss and procure a proposition from him to be submitted to Mr. Morss himself, he stating that although he felt confident of being able to stop Mr. Knapp manufacturing forms because they infringed on his, yet it might be cheaper to buy him out than to conduct lawsuits.

R. D. Int. 25. What was said by Mr. Knapp at the interview concerning the future manufacture of other styles and forms?

A. I cannot remember the details of any conversation about futurity.

(Recross-examined by Mr. DANE:)

R. X Int. 26. In your answer to the 24th Int. you have stated that Mr. C. A. Morss explained that arrangements had been made for an interview with Mr. Knapp. Now I ask whether you have

stated in the answer referred to all that Mr. Morss said to you concerning this matter, and whether you have given his language used by him at the time referred to?

256 A. Undoubtedly I have not given all the conversation in a brief answer, but I have given its substance and meaning and as nearly in Mr. Morss's language as I can recollect.

EBENEZER M. McPHERSON.

Subscribed and sworn to before me, this 10th day of July, A. D. 1888.

E. E. MARVIN,
Master pro hac vice.

(Cross-examination of R. R. APPLETON resumed:)

X Int. 60. As the selling agent for the complainant in these suits, and dealing in and handling the dress forms made by him, you are quite familiar with their structure as well as their manner of operating, are you not?

A. Yes, so far as my knowledge of mechanics goes.

X Int. 61. And you understand them well enough, do you not, to enable you to explain their structure and mode of operation to customers?

A. I can fully explain their mode of operation.

X Int. 62. But not their structure?

A. I don't understand the question.

X Int. 63. Wherein do you fail to understand it?

A. What do you mean by structure?

X Int. 64. The various parts which together constitute the structure, whether it be what is termed the full form or what is termed the skirt.

A. Explain in what way do you mean.

X Int. 65. Explain the parts in it.

A. Why, yes; I can do that. I did it almost the last thing last evening.

X Int. 65½. Are you familiar with the art prior to 1880 pertaining to combinations consisting of ribs, braces, adjustable sliding devices, all connected and operating in conjunction with a centrally located post similar to the braces, ribs, and central staff, contained in Plaintiff's Exhibit Skirt, E. E. M., com.?

257 (Plaintiff's solicitor objects to the question as immaterial. The state of the art in 1880 has not been inquired into, and has no bearing on the competition during the period of the accounting.)

(Defendants' counsel asks the master, before ruling upon the question, to state his understanding of the order of the court under which he is acting as master or committee, whether he is empowered to take and receive evidence bearing upon the question concerning the various different forms made by the defendants, with a view of determining the fact whether such or what of them are in-

fringements upon the second claim of complainant's patent upon which these suits are based; for unless questions bearing upon the prior art are admitted, it will be difficult or impossible for the master or the court to understand the several structures and their differences, particularly in view of the fact that the form used before the court on final hearing embodied and contained a particular structure and combination of parts pertaining to the hip portion of the skirt, upon which hearing the court held among other things that the form of defendants contained the double oppositely inclined braces within such hip portions of the infringing skirt.)

(The master rules the question out, not considering the state of the art prior to 1880 as having been a subject of the direct examination of this witness. He refuses to give his understanding of the order under which he is acting in reference to the different forms that defendant has made, for the reason that it does not yet appear before him that defendant has made but one form, nor has he been asked to take an accounting except as to one form, nor does it yet appear that he will be.)

X Int. 66. State if you can, the actual profit, either to the defendants or complainant, due solely to the employment and use of the braces in the hip portion of the forms, in evidence marked Plaintiff's Skirt, E. E. M., com., over those employed in the Everett, Le Moine and others with which you are acquainted.

258 (Complainant's solicitor objects to the question as not relating to the subject of the direct examination.)

(Question ruled out, as being not in cross-examination of any subject of the direct examination.)

(Defendant excepts on the following grounds: 1st. That as the witness is testifying in a matter of accounting, based upon the claim of complainant, that it is proper to ask the witness produced by the complainant, who it is submitted has been shown to be competent to testify concerning the matter inquired about, it being upon the question of the comparative value of the particular features of the claim sued upon over other structures and combinations for a like or similar purpose, as by this we are to ascertain the actual advantage, profit, or damage for which this accounting is held.)

X Int. 67. What advantage has the plaintiff's form in suit over that of defendants, or the defendants' over that of complainant?

A. Up to this time the plaintiff has not made only a few forms with a bust having a smooth surface or solid sections, or quarters. The defendants' complete form has a bust with solid sections, and is considered by some as being better for that reason.

X Int. 68. You have in your last answer stated the chief or main advantage as between the two forms, have you?

A. I think so.

X Int. 69. Do you or not know that the hip portion of the defendants' skirt form in suit alone are involved?

(Complainant's solicitor objects to the question, as it does not ap-

pear that the witness is acquainted with the issues in the suit, and has not been interrogated in respect thereto.)
(Question ruled out, and exception taken.)

X Int. 70. Do you know what features are involved in the present suits, in which you are now testifying?

259 (Complainant's solicitor objects to the question as immaterial and incompetent, as it does not relate to a subject of the direct examination.)
(Question ruled out, as not being cross-examination of any subject of the direct examination, and exception taken.)

X Int. 71. What do you understand to be the issue in the suits in which you are testifying?

(Objected to as incompetent and immaterial, and as not being cross-examination of anything in direct examination.)
(Question ruled out as being incompetent and immaterial and not cross-examination of any subject of the direct examination.)
(Defendants' counsel insists that he has a right, under the rules in such cases, to ask the witness questions bearing upon the issues upon which the witness has already testified; also, that the question is entirely proper in order that the court may understand the knowledge of the witness concerning the matter he has been examined on his direct, and therefore requests that his exceptions may be noted accordingly.)

X Int. 72. What advantages, if any, does the plaintiff's patented form in suit have over these contained in defendants' forms, not possessed by others? You may refer to the Exhibit Plaintiff's Skirt, in evidence before you, to enable you to explain your answer.

(Complainant's solicitor objects to the question as incompetent, a comparison of the device of the patent with the defendants' forms, of which device it does not appear the witness has any knowledge and about which he has not been interrogated.)
(Question is admitted and exception taken.)

A. The plaintiff's skirt, as exhibited, is better than defendants' skirt, on account of its greater expansion and contraction.

260 X Int. 73. Have you stated all the advantages that you know of, called for in my last previous question, in giving your answer thereto?

A. It is also lighter.

X Int. 74. Is this all?

A. The portability, ease of packing and transportation, that I spoke of yesterday. The defendant's skirt form is in a measure solid; in other words, it is shipped standing and crated.

X Int. 75. Does your last answer, along with answers to Ints. 72 and 73, include all the advantages called for by the 72d X Int.?

A. I think so.

X Int. 76. In your answer to Int. 13, you have stated that the competition has been strong for the reasons that defendants have

sought your customers in the trade after you had made a demand for dress forms. Now, as a matter of fact, were not the defendants' forms in the market prior to the time you began to act as the agent for the complainant Morss?

A. To a very limited extent, yes.

X Int. 77. Have you personal knowledge, or had you at that time full knowledge of all that was done by the defendants in the manufacture and sale of forms?

A. Not full knowledge.

X Int. 78. Had you personal knowledge of the amount of business done by them, pertaining to the manufacture and sale of forms produced by them?

A. I could not have personal knowledge of all the business done by defendants without access to their books, but know, as a matter of fact, their business was very small. This is verified by the statements rendered by the defendants in this or some one of the cases now pending.

X Int. 79. As the statement rendered in this case, as you have stated, is supposed to embrace those forms only thought to be infringements of the patent in suit, how can you, by such facts, state of your own personal knowledge, that the defendants' business in dress forms was small?

A. The forms supposed to be infringements are practically all the forms defendants ever made, or at least they are all that have ever been sold. I know this from my knowledge of the trade.

261 X Int. 80. Then, if I understand you, you say that all of the forms that have been sold or disposed of by the defendants are infringements of complainant's patent; am I correct?

(Complainant's solicitor objects to the question as immaterial.)
(Question admitted.)

A. I referred in my answer to the complete form and skirt form made by defendants before the injunction was served.

X Int. 81. What injunction do you refer to, and upon whom was it served, and when?

A. I think the injunction was granted by Judge Shipman against the Union Form Co. or Messrs. Knapp, all of which the counsel is familiar with. I think it was served in April of this year.

X Int. 82. I am not asking you what you think, or what counsel knew, but simply facts within your own knowledge, and therefore repeat the question.

A. I have given the only answer I can to the question.

X Int. 83. Can you now state the number of different styles of forms, or forms in which the construction of parts differ, that are made by the defendants?

A. I cannot.

X Int. 84. Approximately, how many?

A. I have noticed that the defendants have recently changed their forms somewhat, and may, for all I know, have several new ones.

X Int. 85. How many different styles, if you know, were made and sold by the defendants at any time prior to April last?

A. Practically, only two styles—their complete form and so-called solid skirt. They did make and sell a few folding skirts, and another skirt somewhat like in appearance to their solid skirt. Neither of these were in the trade to a great extent, as they were not as good as defendants' other skirts.

X Int. 86. Did you have access to a factory of the defendants to enable you to know just what forms were made and sold by them?

262 A. Of course not; but, as defendants made forms for sale, they would naturally be found in the trade.

X Int. 87. You stated, yesterday, that you did not personally visit various of the cities in the United States, and this fact, coupled with your last statements that you have not visited the factory of the defendants, how could you have had personal knowledge of what the defendants did or did not do in the manufacture and disposition of dress forms of other styles and character not familiar to you?

A. I believe that my answers yesterday cover the question thoroughly. I got my information from my brother, who manages my form business for me, and who has recently traveled over the greater part of this country.

X Int. 88. Then, the only information you have had concerning the matters inquired about in my previous question, is that derived from your brother; am I correct?

A. No. Some time last fall, Mr. W. H. Knapp acknowledged to me his having only made a few of the skirts described as being in appearance like the so-called solid skirt, and that he was working them off. I further know from personal knowledge that either his folding skirt, or the skirt just described, did not sell to advantage in the New York and Brooklyn trade.

X Int. 89. Who was present at the time of the interview with Mr. Knapp, at the time the conversation was had, as stated in your last answer?

A. No one. He said that he had just sold 100 to Mr. Bristow, and a few days after this Mr. Bristow reduced the price of this skirt from $3 to $2.25.

(Defendants' solicitor objects to all that part of the answer after the words "No one," and the master is asked to rule it out.)

(Answer after "No one" stricken out by master, as not responsive.)

X Int. 90. Did your brother visit the factory of the defendants and ascertain the facts inquired of in X Int. 87?

A. No.

263 X Int. 91. What justified you in making the statement contained in your answer to X Int. 79, to the effect that all the forms defendants ever made are supposed to be infringements?

A. I used the words supposed to be infringements in a measure repeating the question as asked, but alluded to the complete form and skirt form, which form the bulk of defendants' business.

X Int. 92. What justified you in making the statement in X Int. 79, to the effect that all the forms ever made or sold by the defendants were supposed to be infringements?

(Witness states: I should like to read X Int. 79, and my answer thereto, again.)
(Defendants' solicitor desires the witness' request be taken down.)

A. Interrogatory 79 refers to a certain statement supposed to contain the forms infringing, and it is to those in that statement to which I allude.

X Int. 93. Then, if I understand you correctly, you do not of your own knowledge know what of the defendants' forms are really infringements of the complainant's patent in suit; am I correct?

A. No. I refer in all my answers to the two forms heretofore described, but I am not an expert in patents.

X Int. 94. Then, if I understand you, you do not of your own personal knowledge know that the two forms alluded to in your last answer are infringements of any claim of the patent, upon which these suits are based?

A. I do not know it.

(Redirect by Mr. PERKINS:)

R. D. Int. 96. Do you now see any means of adjusting and using the Exhibit Complainant's Skirt, after the tapes have been removed?

A. Yes, it can be adjusted after the tapes are removed, and held in any position by combining the sliding collar and the post, to which the braces are attached, in one piece.

264 R. D. Int. 97. How would it work without such union of the two collars, if it was fully contracted and a skirt then placed over it, and how would you adjust it under these circumstances, if at all?

(Defendants' solicitor objects to the question: first, on the ground that complainant's solicitors have repeatedly objected to questions propounded to the witness on cross-examination, because the witness was not qualified to testify concerning the details and parts composing forms of the character now inquired about.)
(Question admitted, and defendants except.)

A. When the tapes are off, the form will adjust itself to almost any size skirt put over it.

R. D. Int. 98. How will it adjust itself?

(Same objection made. Question admitted, and exception taken.)

A. By placing a skirt or garment over the skirt form, with the waist band of the garment around the top of the skirt form, the form will operate and be in effect about as good as if no tapes were used on the skirt form. The tape measures on the skirt form, as heretofore stated, are to facilitate adjustment.

R. D. Int. 99. The form having adjusted itself to the skirt, what

would you then do to prevent its being collapsed by pressure from without?

(Same objection, ruling and exception.)

A. Place the upper set-screw on the top of the braces pointing up in the top portion of the skirt.

R. D. Int. 100. What would be the effect, after the form had adjusted itself to the skirt, of pushing up the collar having a set-screw below the double brace on the hip portion as far as it could be and setting the screw?

A. The effect would be to expand the skirt at the hips to the largest size possible.

265 R. D. Int. 101. What would be the largest size possible when a skirt was upon the dress form?

A. About fifty-three inches hip measure.

R. D. Int. 102. Suppose the circumference of the skirt was twenty-five inches, which I have supposed was over the dress form, what would be the limit of expansion of the dress form under the circumstances which I have enumerated in Int. 100?

(Defendants' solicitor objects to the question as immaterial and irrelevant. Admitted and exception taken.)

A. Twenty-five inches would be the limit of skirt over it.

(Recross-examined by Mr. DANE:)

R. X Int. 103. Since the close of your cross-examination you have made yourself quite familiar with the structure composing plaintiff's skirt form, have you not?

A. No, sir; I was familiar with it before.

R. X Int. 106. And you were perfectly familiar with all details of its structure, even prior to this day, were you not?

A. No, sir; I found upon further examination, this morning, at Mr. Morss's office with Mr. Morss's son Everett, that the form possessed advantages that heretofore I was not familiar with.

R. X Int. 107. During your experiments made with the form before you, one of the tapes was left upon the structure at the hip. I have removed the tape referred to, and I now ask you to adjust the form to an extent of about one-half of its full capacity, and let it stand after such adjustment by itself untouched and without any other appliance than what it now contains.

A. There was no claim that it could be adjusted that way. Present the garment of the size desired, place it over the form, and the form will immediately adjust itself to the garment, or place one of the collars beneath the upper brace, and the form will be held at any size.

R. X Int. 108. I will now ask you whether you have read the complainant's patent in suit?

(Objected to as immaterial and not gone into on the direct examination. Question ruled out, and exception taken.)

266 R. X Int. 109. Do you know whether the form with which you have been experimenting is in accordance with the complainant's patent, upon which this suit is based?

(Same objection; question disallowed, and exception taken.)

R. X Int. 110. Please take the form with which you have been experimenting, with the tapes removed, with one set collar above the hip braces, another below the lower slide which forms a part of the hip adjustment, and the third set collar below the lower set of braces which extend the lower part of the skirt form, and then leave it untouched and away from other support or contact except the floor upon which the form stands, and then place the band over the form, if you find it, under the circumstances named in the question, in proper position, and then tell the court what is the result.

A. Following out the counsel's request, and leaving off everything but the feet, the form did not and will not stand adjusted, but slipped down the rod and collapsed. Putting the band over it afterwards had no effect upon it.

R. X Int. 111. You admit, do you not, that the three set collars were placed on the central staff or support at the places indicated in my last question, do you not?

A. Yes.

(Redirect by Mr. PERKINS:)

R. D. Int. 112. Please adjust the form precisely as requested by counsel in R. X Int. 110, then suppose a skirt to be placed over it having a circumference less than the circumference of the form when fully extended, and then release it as requested by counsel, what would be the result thereof?

A. The form would stand perfectly adjusted.

R. D. Int. 113. What changes were made in the Exhibit Plaintiff's Skirt to put it into the condition prescribed by the counsel in R. X Int. 110?

A. The waist band, hip band and sliding set collars occupying a position between the double set of hip braces, and small wire support occupying the same position between the two sets of double braces, as well as one of the other set screws and collars, were all removed.

267 R. D. Int. 114. After the form had been adjusted, even as called for in your answer to R. D. Int. 112, did you find that the form would sustain itself in position, with your hand removed therefrom, so as to enable you to place thereon a skirt, and the form sustaining itself in proper position without the aid of the hand?

A. No, not without holding the form or upper brace with one hand, while placing the skirt on with the other.

R. D. Int. 115. Suppose you place your knee against the side of the form, while you place the skirt upon the form with the hands, what would be the result?

A. By placing the knee against the vertical ribs, the skirt form is held in any position without touching it with the hands.

(Recross by Mr. DANE:)

R. X Int. 116. Supposing the form in question, under the circumstances indicated in the question just answered by you, was standing in a store where skirts were to be displayed, and the sales lady should remove the skirt from the form and step to the counter without leaving an assistant to maintain the form in position, under those circumstances what would be the result?

A. In the first place, after the customer has once seen the form, she is usually so well pleased by it that she takes it with her. The form, as a matter of fact would collapse, as heretofore stated and shown.

R. R. APPLETON.

Subscribed and sworn to before me, this 10th day of July, A. D. 1888.

E. F. MARVIN,
Master pro hac vice.

Adjourned to July 11, 9.30 a. m.

BOSTON, *July* 11, 1888.

Accounting continued.

Present, Mr. Perkins and Mr. Tucker, for complainant; Mr. Dane, for defendants.

316. Law.

Stipulation.

It is stipulated by the counsel for the respective parties that the evidence taken and to be taken herein may be used, so far
268 as the same is applicable and admissible, upon the final hearing in the cases, Nos. 336 law and 538 equity, in this court, with the same force and effect as if originally taken in said case. It is further stipulated by the counsel for the respective parties that the evidence offered and to be offered in the cases, Nos. 336 law and 538 equity, in this court, may be considered as introduced in this case, so far as it is applicable and admissible, and with the same force and effect as if originally taken herein.

Defendants' solicitor produces before the master, in compliance with the order of July 4, 1888, three forms which he understands represents the other kinds of dress forms manufactured by the defendants during the period named in said order, which have not been heretofore produced before the master, and they are marked respectively:

Defendants' Form A.
Defendants' Form B.
Defendants' Form C.

Defendants' solicitor requests the attendance of the witness C. A. Morss for the purpose of cross-examination as to his direct evidence in this case, and the master directs that at some time before the complainant's evidence shall be closed, the said witness shall attend

for such purpose unless the complainant's — shall see fit to withdraw the said direct evidence of said Morss from the case and not rely on the same.

Mr. EVERETT MORSS, a witness produced by the complainant, sworn and examined by Mr. PERKINS:

Int. 1. What is your name, age, residence and occupation?

A. Everett Morss; age, 23 years; residence, Boston, Mass.; am in the employ of Morss & White, wire-workers.

Int. 2. State whether or not you are acquainted with the manufacture of dress forms, and what experience you have had in that business?

A. I have been in charge of the business of manufacturing and selling the Hall dress forms for something over two years for Charles A. Morss, doing business under the name of Morss & White.

269 Int. 3. What styles of dress forms do you mean when you say the Hall form?

A. Plaintiff's Complete Form and Plaintiff's Skirt, exhibits in this case.

Int. 4. Are you acquainted with the cost of the construction of dress forms like the Exhibit Plaintiff's Skirt? If so, please give the items thereof.

A. I am in a position to know better than any one else the cost of the form, as I buy all stock and audit all bills and pay-roll. The items of cost of the skirt are:

Wire	15	cents.
Tin	3	"
Rings	1	"
Set-screws	2	"
Notches	2	"
Foot castings	14	"
Post	7½	"
Tape	3	"
Paper and strings	1	"
Cases	2	"
Paint and extras	1	"
Labor	23	"
	74½	"

The labor is contract price—done by the piece. Waste, rent, and general expense account are in addition to this, are considerably less than 10 per cent. on the foregoing amount.

Int. 5. Are you acquainted with the cost of construction of dress forms like plaintiff's complete form, and if so, will you please give the items thereof?

(Defendants' solicitor says: The question is objected to, as the bust portion of the dress form is not in issue in these suits.)

(Complainant's solicitor says, that it was a full form which was found to be an infringement.)

(The question is admitted, and exception taken.)

270 A. Yes. Complainant's complete form is the sum of plaintiff's skirt and the bust. The items of cost of the bust are as follows, viz:

Wire	11 cents.	
Tin	9 "	
Notch	3 "	
Rod	2 "	
Rings	1 "	
Set-screws	1 "	
Castings	2 "	
Knob	1½ "	
Cases	2½ "	
Paper and twine	1 "	
Labor	37 "	piece-work.
	71 "	
Add to this cost of skirt, as before given	74½ "	
Gives total of	145½ "	
Add waste, rent, and general expenses, 10 per cent.	14½ "	
Makes	160 "	in all.

The figure thus obtained certainly includes all items of cost.

Int. 6. By what means or method did you ascertain the amount of these several items, given in the last two answers?

(Defendants' solicitor objects to the question so far as the items relate to the bust portion of the figure.)

(Question admitted, and exception taken.)

A. The above estimates were made by carefully weighing and measuring each kind of stock entering into the construction, a careful inspection of the books, and a full knowledge gained from experience of all the items and facts which could affect the cost; the totals given being certainly not less than the actual facts, though the cost may not be as much as the totals given.

271 Int. 7. Has the cost of either the skirt or complete form changed in any respect during the period of the accounting; and, if so, to what extent and when?

A. The price of various kinds of stock varies, of course, all the time to a slight extent, and the general tendency has been downward, but the cost as given is more than is the cost to-day; but such cost has been averaged and in case of doubt has been made large enough to cover.

Int. 8. Has there been any change in the cost of labor during the period of the accounting; and, if so, to what extent and when?

A. No; all contract.

Int. 9. What is the difference, if any, between the skirt forms like the exhibits and those having wood posts?

A. The cost of the wood-post skirt for stock is nine cents less than skirt like exhibit, the labor being the same.

Int. 10. What proportion of the skirt forms made and sold by the plaintiff during the period in question had the wooden post?

A. A little less than half—to be exact, four-ninths.

Int. 11. At what price or prices were the dress forms like the Exhibits Plaintiff's Complete Form and Plaintiff's Skirt, sold by the plaintiff, including herein those containing the wooden post, during the period in question?

A. The price in general was as follows:

Plaintiff's complete form	$4.50 each.
Plaintiff's skirt	2.50 "
Plaintiff's skirt, wood posts	2.00 "

A small proportion has been sold at retail at a greater price.

While a majority have been sold at a discount on the prices given, the discount reaching as high as 25 per cent., I cannot state the proportion sold at each price, or discount; but a calculation based on the total number of forms sold during the whole period of manufacture, from Jan. 1, 1880, to April 30, 1888, and the total cash receipts during that time show that we have averaged to receive 14 per cent. less than the prices before given, or that the discount has averaged 14 per cent., and that as three-quarters of the total number of forms were sold during the period of the accounting, the discount above given must be approximately correct for that period.

272 Int. 12. Can you ascertain from your books, or any other way, what amount you would have received at the prices named in your last answer for all the forms sold during the period of the accounting, if no discounts had been made?

(Objected to as immaterial, for the reason that nearly every such kind of goods are subject to discount when sold to the trade. Question admitted, and exception taken.)

A. Yes, if I want to, but I do not care to state the exact volume of our business, unless it is necessary.

Int. 13. Do you know what amount less than the amount inquired for in the last question you actually did receive from the sale of dress forms during the period in question?

A. No, but it could be figured, if necessary.

Int. 14. Have you any objection to ascertaining and testifying what proportion of the amount which would have been received at the usual prices is the difference between that and the actual amount received during the period in question?

A. No; I can give it to you to-morrow.

Int. 15. Have you considered in your estimate of your incidental expenses any percentage upon the investment in business?

A. The margin of 10 per cent. added to the cost would cover in-

terest on all capital invested in the business including that paid for the patent.

Int. 16. At what percentage have you allowed interest on the investment?

A. Ordinary and usual interest of 6 per cent.

Int. 17. Were you present at the interview at the Astor house, Oct. 18, 1887, at which Wm. H. Knapp and Messrs. McPherson and Appleton were present, as testified to in this case, and if so, will you state the conversation between Wm. H. Knapp and the others touching the business of the defendants?

A. Yes. The appointment was made for this interview in New York some days ahead, the understanding being that Mr. Charles A. Morss was to be present in person. After making all arrangements to go to New York for this special purpose, Mr. Morss
273 found himself too sick to undertake the trip, and in consequence I received orders to go in his stead, he deeming it of sufficient importance to have this meeting with Mr. Knapp to send me over, although I had been steadily at work at the factory for the preceding thirty-six hours and had had no sleep during that time. On the day in question, Mr. Knapp, Mr. McPherson, Mr. Appleton and myself spent about five hours together in one of the chambers of the Astor house. The meeting was arranged, after considerable hesitation on our side, at the earnest solicitation of Mr. Knapp, who said he was anxious to make some amicable settlement of the patent suits, and that he would turn over his business to us to accomplish this end. All through the meeting Mr. Knapp gave us to understand that the volume of his business was large, as also the margin of profit. He stated, in course of the negotiation, that he had sold not less than 10,000 forms during the preceding twelve months, the majority of which were complete figures. He also stated that his sales during that time had amounted to at least $40,000; more than that. In regard to the cost of the full figure, he stated that it was less than $3, how much less he refused to say. After some hours of talk, I finally submitted a proposal for us to take his business, toward which he seemed favorably inclined, and said that if we would agree to the terms which I had proposed he would furnish cost sheets and swear to their accuracy, and also make affidavit supporting his statements in regard to the number of forms sold—that is, 10,000 during the preceding twelve months.

This proposition I submitted to Mr. Morss, who agreed to it and was ready to proceed, except that we never received the affidavits of Mr. Knapp, and upon my next interview with Mr. Knapp, some weeks later, he stated that the terms, upon reflection, were by no means satisfactory, and the trade was declared off.

(At this point, witness states that he desires to correct his statement of the cost of labor in making plaintiff's complete form, given in answer to Int. 5. The labor item should be 40 cents instead of 37 cents, and therefore the total $1.63 instead of $1.60; and also the answer to Int. 8, which instead of being "No; all contract,"
274 should be "No change in regard to contract price on skirt

forms, but contract price on bust forms was originally 45 cents, then 40 cents, and afterward 37 cents, the average being probably about 40 cents. All labor on both forms was by contract.")

(Cross-examined by Mr. DANE:)

X Int. 18. Just how long have you been in charge of the manufacturing and selling department of the Morss-form business?

A. Since some time in April, 1886, as I took complete charge when Mr. Hall sold his interest.

X Int. 19. When did Mr. Hall sell his business, as referred to in your answer?

A. A few days before April 27, 1886, the papers being passed on that day.

X Int. 20. Did Mr. Hall own the premises now occupied by your father, at or prior to the making of the assignment referred to?

A. No. The business of manufacturing these forms has for the last eight years (before which time hardly any forms were made) been carried on by Morss & White, they furnishing everything necessary, and employing Mr. Hall to conduct the manufacturing, he receiving a percentage of the profits in payment for services and royalty. He, therefore, sold nothing but patents, including claims for damages and the good will of the business.

X Int. 21. How long after the transfer referred to, by Mr. Hall to your father, did Mr. Hall have charge of the construction of forms?

A. He gave up charge to me as soon as the sale was made verbally, and before the actual transfer of the papers.

X Int. 22. Does Mr. Hall continue to receive a percentage of the profits in the form business in payment for services and royalty?

A. No.

X Int. 23. When did it cease?

A. April 1, 1886.

X Int. 24. Mr. Hall had charge of the manufacture of the
275 forms, called in this case plaintiff's forms, prior and up to the time of the transfer, did he not?

A. Yes; until within less than one week of the transfer.

X Int. 25. Does Mr. Morss, the plaintiff, manufacture other than the two forms represented in these suits as plaintiff's complete form and plaintiff's skirt?

A. Excepting the wood-post skirt before mentioned, the answer is, no.

X Int. 26. In what respect, if any, does the skirt portion of the wood-post form differ from the skirt portion of the form marked plaintiff's skirt, in evidence?

A. The wood-post form is a skirt form only. The only differences between this and the other skirt form are the standard and dimensions of some details in the frame, the design of the two frames being the same.

X Int. 27. In what respect and what features are there differences in the two forms referred to, excepting the wooden post?

A. The feet are of an entirely different pattern. The ribs in the

wood-post skirt are about three inches shorter; the upper braces are half an inch longer; the rings and notches are made a different size to fit larger standards.

X Int. 28. Those of wooden standard or posts were seldom provided with a bust, were they?

A. No: practically never.

X Int. 29. Is there any patent for the particular kind of bust which appears in the figure marked Plaintiff's Complete Form, so far as you know?

(Objected to as incompetent. It does not appear that the witness is qualified to testify that the device is covered by patents. Question admitted.)

A. Yes; by patents issued to John Hall, and assigned by him to the plaintiff.

X Int. 30. The plaintiff being at the present time the exclusive owner?

A. Yes.

276 X Int. 31. For what period of time has he been the exclusive owner?

A. Since April 27, 1886.

X Int. 32. In answer to Int. 6, of your direct examination, you have stated that estimates were made by carefully weighing and measuring each kind of stock entering into the forms of the complainant, about which you have been testifying. In order that I may understand you correctly, I ask you to explain just how you proceeded with the weighing, measuring, and estimating as stated?

A. For instance, the wire. The ribs, braces of each skirt form, are in all cases of a fixed length of No. 12 wire, and I figured from this the total length of such wire in the form, from this by a table obtained the weight, added a trifle for the very small amount of other wire in the skirt, and from this figured the cost. The castings I weighed, and from that figured the cost. The posts are bought by the piece.

The set-screws are bought by the piece.

The tin was measured, and the size of a sheet from which all the clips could be cut, and cost figured therefrom.

The tapes were figured from the length, with an addition for printing by the thousand. The bust cost was figured in a similar way.

X Int. 33. Have you generally used one size and number of sheet tin from which to cut the various details which appear in the form before you? And if yea, state the size and number.

A. Size always 14 x 20. In regard to number, we use IX tin for upper and lower clips on the skirt, IXX for the 3-eye clips.

X Int. 33. How many perfect pieces of the kind referred to in your last answer would a single sheet afford?

A. The details of the various sizes of these clips I don't carry in my head. I don't remember.

X Int. 34. State approximately.

A. There are 110 3-eye clips to a sheet of tin.

X Int. 35. Are such cut out by dies or shears?

A. A part by each.

X Int. 36. The small 3-eyed are punched or cut out with dies, are they not?

A. The three small eyes are punched.

277 X Int. 37. Are the clips that appear on the Exhibit Plaintiff's Skirt, at the lower extremity of the ribs, formed by die or shears, or both?

A. The sheets are first cut into strips by shears, and then cut out into clips by a die.

X Int. 38. How many of such clips does the sheet afford?

A. Something over 150.

X Int. 39. I notice that before answering my questions concerning the capacity of the material for producing the parts called for in the construction of the clips in question, that you have taken measurements of the clips referred to, and then figured up on paper for the result given in your answers thereto. Now, I wish to know whether such has been your method in making up the various items entering into the construction of a form already enumerated by you to-day?

A. Yes. When estimating the tin, in preparation for this evidence, last week, I sat at my desk with a skirt and foot rule and made the figures in the same way that I have just made them in answer to the foregoing questions.

X Int. 40. Can you tell without figuring, from actual knowledge, what a sheet of tin will produce from which to form the clips at the top of the skirt form?

A. No.

X Int. 41. Do you know by any actual test made by you, either personally or under your observation, the amount of waste of a sheet that produces the clips upon the lower extremity of plaintiff's skirt?

A. In a sense, yes; but the actual figures are not easily ascertained, as the waste from that process we always work up in other ways.

X Int. 42. Do you apply this waste portion in the manufacture of the skirt forms?

A. In part only.

X Int. 43. To what portion do you apply such waste?

A. To the making of the upper clips.

X Int. 44. Then, as a matter of fact, there is an amount of waste, even in instances of what might otherwise be waste cut from the sheets from which the T clips are cut; am I correct?

A. Yes.

278 X Int. 45. Have you actual knowledge of the number of defective ribs usually found in the stock prepared therefor in quantities say for 100 forms?

A. Yes.

X Int. 46. How many?

A. Our rule is that good stock, such as we usually employ, should show not exceeding 15 defective ribs per 100 forms.

X Int. 47. I did not ask you what you should show under certain

circumstances, but concerning real results occurring in the ordinary processes through which such articles are passed in their formation and application. I therefore desire that you answer my previous question.

A. This rule was based on our ordinary breakages, and we generally have about this percentage of waste.

X Int. 48. (Objected to as irresponsive, and question repeated.)

A. Fifteen ribs.

X Int. 49. You have based your last answer upon tests made by yourself personally, have you?

A. Yes.

X Int. 50. When, and how many times?

A. Perhaps a half a dozen different times in the course of the past eighteen months.

X Int. 51. I ask you now to state definitely two different times when you made the test referred to with the result stated in your answer to Int. 48.

A. Dates I cannot give exactly, but I made a careful test, I think some time in May, 1887, and another last October or November, at which times we began to obtain our supply from another concern.

X Int. 52. About what length of time had you been taking wire from the other concern which you dropped?

A. Something over a year, probably eighteen months.

X Int. 53. Do you have the particular charge, giving daily directions to the workmen employed in the production of the ribs, about which you have been testifying?

A. Before June 4, 1887, yes, to a large extent. Since that time I have given most of my instruction to the foreman.

279 X Int. 54. At the present time and for the period since July, 1887, what has been your special duties about the factory or store?

A. Complete charge of the factory, with special reference to the dress-form department, beside acting as Mr. Morss's representative in many and at times all parts of his business.

X Int. 55. How many lots of rib stock have you ever personally prepared and formed during the last year?

A. None.

X Int. 56. How much prior to a year ago?

A. Little, if any.

X Int. 57. How many lots during the last twelve months were produced from the raw material, formed, and attached to the other parts which constitute the form complete, that you were present and noticed the results personally?

A. None.

Adjourned to July 12, 9.30 a. m.

BOSTON, MASS., *July* 12, 1888.

Accounting continued.

Present, Mr. Perkins and Mr. Tucker, for plaintiff; Mr. Dane, for defendants.

X Int. 58. Does the complain-t, Morss, manufacture the sliding blocks surrounding the central staff of Complainant's Exhibit Skirt, to which blocks the braces are attached?

A. The above refers to the so-called "notch" in my estimate. At present we do not manufacture them.

X Int. 59. Did you ever manufacture them, and if yea, when?

A. Yea, during this period until about a year ago.

X Int. 60. Of what material were they formed when made by Mr. Morss?

A. During this period the same as now, always a very cheap grade of babbit- metal in the skirts.

X Int. 61. You say cheap quality of babbit- metal. I ask if you can state of your own personal knowledge the number of parts to the pound of the ingredients which constitute the casting,
280 that is, how many parts antimony, how many parts copper, how many parts block tin, and how many parts lead?

A. No.

X Int. 62. And you cannot tell of your own personal knowledge the cost of the several ingredients entering into the compound known as babbit- metal, either at the present time nor during the period that such was manufactured by your father?

A. No.

X Int. 63. Are the slides or notches referred to cast in metallic moulds? If not, how were they formed?

A. Yes; cast in metallic moulds.

X Int. 64. How many of such slides or notches are there to the pound?

A. If I remember right, sixteen.

X Int. 65. When such were made by Mr. Morss, did he compound the babbit- metal himself, or did he buy the babbit- metal as such during the time referred to?

A. He bought it.

X Int. 66. Can you state of your own knowledge the exact prices per pound paid for the babbit- metal and the names of the parties of whom you purchased such metal?

A. As to the parties, yes; as to price, I am not sure I can recall it at this moment.

X Int. 67. How, then, did you arrive at the figures pertaining to such, included in the list of items enumerated by you yesterday?

A. By figuring the cost of same to us to-day.

X Int. 68. Then, if I understand you, you have based your estimate of the cost of all the items enumerated by you, and for all periods covered by this accounting from the present cost; am I correct?

A. No.

X Int. 69. You have given no other items of cost covering the

period covered between the date of April 27, 1886, and the same date in 1887, that were based upon the actual cost and prices, paid for materials during the period referred to, have you?

A. I have given no estimate covering any such period.

X Int. 70. What did the wire consumed in the manufacture
281 of the rib portion of the skirt part of the dress form made by you cost, prior to July last, per pound?

A. Seventeen cents, less 65 per cent. to 67½ and 5 per cent.

X Int. 71. What were the variations in prices for such wire during the year prior to last July?

A. During the period of this accounting prior to July, 1887, the prices paid for wire are included in the quotations above given.

X Int. 72. The answer is objected to as irresponsive, and the question repeated.

A. The prices varied from 17 cents less 65 per cent., 17 cents less 67½ and 5 per cent.

X Int. 73. And this variation appearing in your last answer, are the only variations in the prices for such wire during the period referred to?

A. I believe so.

X Int. 74. But not absolutely certain?

A. We may have paid a trifle more for a very small amount.

X Int. 75. Of whom did you purchase your wire during the period referred to, prior to July, 1887?

A. From various parties.

X Int. 76. Give their names and places of business?

A. Washburn & Moen M'f'g Co., Worcester Wire Co., Worcester, Mass.; Prentice Wire Mills, Holyoke, Mass.; John Wales & Co., Boston; New Haven Wire Co., New Haven, Conn. This list includes all the concerns that I can this moment recall; but I am not sure that we bought of all of these during the particular period which you saw fit to inquire about.

X Int. 77. Have you stated in your last answer the place where the business pertaining to the sales are or were conducted by these several firms during the period of your purchases?

A. I think not, as the sales were for the most part made at our office in Boston, through agents of the companies specified.

X Int. 78. Can you not specify any purchase of wire direct from any one of the companies or firms referred to, that were not ordered through a canvassing agent?

A. Yes.

X Int. 79. Please do so.

282 A. I have sent orders through the mail to the Washburn & Moen M'f'g Co., but I cannot at this time recollect any date at which I thus ordered wire more than a year ago.

X Int. 80. The Washburn & Moen M'f'g Co. is the only concern that you can remember having sent orders through the mail, or to giving orders for such wire direct and not by way of canvassers or traveling agents?

A. Your question, X Int. 78, asked for only one concern.

X Int. 81. I will then ask you to specify each concern from which

you purchased wire direct therefrom, excluding those from whom you purchased only such wire through canvassers.

A. I do not feel competent, after so long an interval, to say that I have bought wire direct of any of the other concerns, though it is possible I may have done so.

X Int. 82. At all events the wire, whatever way, was billed to C. A. Morss, or Morss & White, was it not?

A. Certainly.

X Int. 83. And by the concerns supplying such wire?

A. I think so.

X Int. 84. I notice in your items of cost, rendered yesterday, one of "castings." What part of the form do castings compose?

A. In the skirt, the feet, the collar, the slide and button; in the bust, the casting, to which the upper braces are attached, and the penholder, forming part of the braces in those busts where the penholders are used.

X Int. 85. Please refer to Plaintiff's Exhibit Skirt and point out thereon the things which you have termed "rings," in your items rendered yesterday.

A. This is one, being the collar containing a set-screw. There are three in the skirt and five in the complete form, all like this. I find, on looking at a printed copy of the Hall patent, that they are called "rests" therein.

X Int. 86. From whom do you procure the foot castings?

A. E. D. Draper & Son, Norwood, Mass.

X Int. 87. In what county is Norwood, how far from Boston?

A. I don't know the county, but it is within twenty miles of Boston, on N. Y. & N. E. R. R.

X Int. 88. I notice a thumb nut serving to hold the main or central staff to the foot, on plaintiff's skirt, not enumerated
283 in the items given yesterday. What is the cost, if you know, of the part referred to?

A. The part referred to is included in the estimate given under the head of castings, and called in my answer to Int. 84 a button.

X Int. 89. But it does not appear in your items of skirt rendered yesterday.

A. Yes, as one of the casting, though the particular parts were not specified in the estimate.

X Int. 90. Of how many parts is the foot composed, in the form referred to?

A. There are six pieces in what I call the complete foot.

X Int. 91. Please enumerate.

A. Three legs, collar, slide and button.

X Int. 92. What you term the button is a threaded thumb nut, is it not, at the lower extremity of the central staff?

A. Yes; at or very near the lower extremity.

X Int. 93. Is it of malleable iron, or gray iron?

A. Gray iron; we use no malleable anywhere.

X Int. 94. Is the japanning of the feet done by Mr. Morss, or by Mr. Draper?

A. By Mr. Draper.

X Int. 95. Does Draper furnish you the several parts which you say constitute the foot at so much per pound, or how otherwise?

A. Contract; per pound.

X Int. 96. Japanning included, or separate?

A. Included.

X Int. 97. How much per pound, japanning included?

A. Four and one-fourth cents.

X Int. 98. Does that price include also the threading of the thumb nut, which you have termed the button?

A. No.

X Int. 99. Who threads the nuts or button?

A. We do.

X Int. 100. And you also thread the rests?

A. Yes.

X Int. 101. And the threading of the button, the central staff, three rests with which the staff is provided, the sliding-
284 notch device, and the cutting, forming of the ribs and braces, and the assembling thereof are all done by contract?

A. No.

X Int. 102. Specify what parts by contract, and what parts by day work.

A. Threading of the buttons, the three rests, and the cutting and forming of the ribs and braces, and the assembling thereof, are all done by contract, but there is no thread on the notch devices. The posts or central staffs come to us threaded. There is no day work.

X Int. 103. Then the posts or central staffs are furnished to you by others at a contract price, are they not?

A. Yes.

X Int. 104. By the 100, or 1,000, or what quantity, at what price?

A. The quantities vary, as also the price. I have bought below seven cents and I have paid as much as nine, but the price given in the estimate was what I considered has been the average cost during the period of the accounting. The price is sometimes quoted by the piece, and sometimes at a discount from the list price of quarter-inch pipe, per foot.

X Int. 105. Then, if I understand you, the cost of posts has been estimated not by actual proof based upon the purchases and varied prices from time to time, but by figures made by you upon the idea that you had based the cost given by concluding that the cost of such would average the seven and a half cents, regardless of the varying quantities ordered and the prices paid at different times?

A. I don't understand the question.

X Int. 106. Can you now tell, or from any memorandum which you have with you, at the present time, the number of different lots ordered by you during the period covered by this accounting and prior to October, 1887, and the quantities in each lot, and the prices for each lot?

A. No.

X Int. 107. Are the contract prices paid for labor on the plain-

tiff's skirt the same at the present time as eighteen months ago?

285 A. No.

X Int. 108. The same as a year ago?

A. No.

X Int. 109. The same as eight months ago?

A. No.

X Int. 110. How many variations in prices have you paid for the production of skirts of the kind referred to within the period of time covered by this accounting?

A. One.

X Int. 111. From what to what price was that?

A. The last answer should have been none; the question was misunderstood.

X Int. 112. What is the price paid the workmen for the labor performed by them in forming such parts as they are expected to do upon the several parts which you have heretofore detailed, as done by contract?

A. We paid one man 23 cents for each skirt made during the period of this accounting; that price is 23, as given in my estimate under the head of labor.

X Int. 113. Give the name of the man who has the contract referred to.

A. William Vogler.

X Int. 114. How many assistants does he employ, if any, upon this work?

A. As many as he sees fit. The number varies, and I don't know how many he has had at any one time.

X Int. 115. Vogler, under the contract price named, takes charge of his several assistants, and is held accountable to Mr. Morss for the proper production or construction, or both, is he not?

A. Yes; accountable to me.

X Int. 116. For what length of time has he had such contract?

A. During the whole period of this accounting.

X Int. 117. Does the form business constitute the principal business of your manufacturing establishment, if not, what proportion thereof?

A. No. I don't know the proportion, as it would be hard or difficult to say what proportion of our total sales are manu-

286 factured goods of our own manufacture, and what proportion we simply handle as salesmen, besides the fact that our volume of business is constantly changing.

X Int. 118. How many forms have you made and sold during the last twelve months?

(Objected to as immaterial; question ruled out and exception taken.)

X Int. 119. How large a lot or number of forms have been started at any time during the last six months for construction?

(Objected to as immaterial; question ruled out and exception taken.)

X Int. 120. As a matter of fact, are not the goods produced more or less cheaper as the quantity to be produced is increased?

(Objected to as immaterial; question allowed.)

A. I don't understand the question.

X Int. 121. Do you not know, as a matter of fact, that such and similar goods usually cost more when made in lots of fifty than when made in lots of five hundred?

A. Under ordinary circumstances, yes; though there might be circumstances which would make an exception to this rule. In regard to the production of these goods, I will say we have found that the larger number we make the less the cost per piece; so that if we had made, in addition to what we have made, the number or any considerable of the number of forms that the defendants have sold during this period, we should have made them cheaper than what these goods have cost us.

X Int. 122. Then I infer from your last answer that your trade in forms has not been such as to justify the putting in of any considerable number of parts constituting the form at any one time; am I correct?

287 (Objected to as immaterial, and allowed.)

A. I don't understand the question, it seems indefinite.

X Int. 123. What portion of the question do you fail to understand?

A. The word "considerable," and the phrase "put in at any one time."

X Int. 124. Do you mean to say that you do not know the meaning of the word "considerable"?

A. As defining a quantity, when the standards of the speaker and the spoken to may be different, yes.

X Int. 125. The phrase "put in at any one time" referred to the number of forms started in the process of construction at any one time. With this explanation, and with your own meaning of the word considerable, you may answer my X Int. 122.

A. The question seems to have been put with the impression that it is our custom to start one lot of forms and finish those before starting any more; but since, on the contrary, we are continually making the various pieces, and at the same time putting together other parts already made——

(Defendants' solicitor at this point interposes objection to the statement of the witness on the ground, among other things, that he is presuming without being correct in his presumptions; that counsel supposed that one lot was entirely completed before another was commenced, and that the statement is not in answer to the question asked, and moves to rule out all that portion of the statement preceding the objection. Motion disallowed.)

—the number of forms started at any one time becomes an indeterminate quantity, unless the phrase "any one time" is defined.

X Int. 126. As a matter of fact, do you not know that it is a rule

in most manufactories that articles of a kind or class produced in considerable quantities, are usually started in considerable quantities at one time, and often before the completion of the lot already entered, another lot, and oftentimes several lots are entered before the first lot is entirely completed?

288 A. A considerable acquaintance with the methods of manufacturers makes me think that you are mistaken in the assumption that it is the rule in factories to start a certain lot of goods at one time.

X Int. 127. (The answer is objected to as irresponsive, and the question is repeated.)

A. No.

X Int. 128. You have stated in substance that you had charge of the disposition of the forms after their completion, and consequently know all about the prices for such, have you not?

A. Yes.

X Int. 129. And have been fully acquainted with their disposition and the prices at which they have been sold from time to time since April, 1886?

A. Yes.

X Int. 130. And know the highest and lowest discounts ever made in the sale of plaintiff's forms during the entire period referred to in my previous question?

A. Yes; except, possibly, a very few isolated cases of a single form each, which might have been almost given away without my knowledge.

X Int. 131. Can you mention one or more instances of the kind referred to in your last answer?

A. No. The instances alluded to as possible exceptions, were those that might have occurred without my knowledge.

X Int. 132. But I understood you to say that you had supervision of the matters inquired about, and knew all about the prices as well as the quantities made. How do you reconcile your last answer with the facts previously stated?

A. Because I have supervision is no reason why Mr. Morss should not make a phenomenally low price to one of his personal friends who might wish a single form, without asking my permission or taking the trouble to inform me of the fact if I were away at the time.

X Int. 133. Then you did not render bills and receipts, personally, for all the sales of forms made by the plaintiff?

289 A. No; I am not the book-keeper, nor are bills rendered and receipts taken for the forms sold at retail at our store, in a majority of cases.

X Int. 134. How about those sold with discounts off of your retail prices?

A. I know the prices that each customer pays.

X Int. 135. I notice that you have mentioned 10 per cent. to the cost of items. Please tell us how you arrived at the sum named as being sufficient to cover all the investment required to produce the article, including the patent.

A. Ten per cent. was not meant to cover the investment, which, of course, is returned to us when we sell the goods and get our pay.

X Int. 136. What have you added for clerk hire?

A. Four hundred dollars per annum.

X Int. 137. Is it estimated, or is that sum paid for keeping the accounts pertaining to the form business?

A. That amount is one-half of the clerk's salary, who keeps the books in a good deal less than half, probably not far from one-third, of his time.

X Int. 138. What have you allowed for shop rent?

A. That item I did not figure in at a price by itself, as we are using room which before this time was wasted in our factory.

X Int. 139. You use some power, steam power, do you not, in the manufacture of the forms?

A. Yes.

X Int. 140. What allowance have you made for that?

A. That item, also, I did not figure at a price, but calculated that the 10 per cent. was sufficient to cover it, after taking out the fixed charges.

X Int. 141. Now won't you kindly tell us just what the 10 per cent. referred to was intended to cover, and your method of arriving at the price named, and in doing so specify the amount allowed for power?

A.—

Clerk hire	$400
Interest on investment for patent	600
Postage, stationery, carting, rent, power, and general expenses	800
	$1,800

290 Interest on investment for stock, and labor, I figured along with the waste at a percentage of the costs taken out of the 10 per cent.

X Int. 142. How much space does the form business occupy in your factory?

A. Perhaps about a half of a space 130 x 60, which before was not utilized. This, I think, includes all the space occupied, although it is not all on one floor, as we use a small amount of space on the lower floor, where we had room to set machines and store stock.

X Int. 143. You have also a place for store in the city, independent or separate from the factory, within which you exhibit and dispose of forms, do you not?

A. Yes.

X Int. 144. What allowance by the way of rent have you allowed for this place?

A. Nothing, for the reason that it costs us nothing, as the room taken, which is very small, is in with our other business, with which it does not materially interfere.

X Int. 145. What allowance have you made for printing circulars pertaining to your forms?

A. Only in the stationery account, as the cost is very small, particularly so for the reason that most of the printed matter is supplied by our New York agent.

X Int. 146. What proportion of the stationery account covers the printing referred to in my previous question?

A. I made no estimate of that particular item, it being lumped with other expenses.

X Int. 147. In other words, guessed at.

A. Yes.

X Int. 148. Concerning the trucking or cartage, do you use a truck in connection with your form-manufacturing department?

A. Except on special occasions; no.

X Int. 149. (Question repeated.)

A. Occasionally.

X Int. 150. But you have not made any allowance for this part?

A. Yes.

291 X Int. 151. What proportion and in what item?

A. Included as carting, no proportion was thought of.

X Int. 152. And consequently no definite portion allowed?

A. As distinguished from carting in other styles of vehicles, no.

X Int. 153. In reality, what have you allowed by way of an item for carting?

A. I did not specify the items in my own mind when making up the cost, but I should say that our actual outlay in 1887 for carting dress forms was not over $6 per week on the average.

X Int. 154. But this you are simply guessing at, as you do not have actual figures to guide you?

A. It is a guess, with a pretty thorough knowledge of the bills to guess from.

(Defendants' solicitor moves to strike out all the answer after the word "guess," as irresponsive. Motion disallowed, and exception taken.)

X Int. 155. You simply guessed, without looking at the bills referred to?

A. Yes; though I saw the bills and audited them before they were paid weekly.

X Int. 156. And yet you do not remember the figures for 1887?

A. I certainly do not, as there were no two weeks the same.

X Int. 157. You do not have your machinery and factory where and by which the forms are manufactured, insured, do you?

A. Yes, to 40 and 50 per cent. of their value.

X Int. 158. And what allowance have you made for these items?

A. Nothing.

X Int. 159. Do you have the stock and raw material stored in and used at the factory insured?

A. Yes.

X Int. 160. What allowance have you made in your items for this, and how much?

A. Nothing.

292 X Int. 161. What allowance have you made for your services in managing the form business?

A. Intentionally nothing, and for a reason.

X Int. 162. Could you procure a competent man to superintend your department in the form business for $1,000 a year, in view of the magnitude of the business?

A. Mr. Morss did secure me to do this and a great deal more managing and other work at a price not exceeding $1,000.

X Int. 163. Is Mr. Hall still in your service in the form department?

A. No, nor has he been in our service, in any department, since about April 27, 1886.

X Int. 164. Complainant does not employ any other person but yourself and book-keeper about the store and factory, pertaining to the form department, excepting, of course, the factory workmen or mechanics heretofore referred to, does he?

A. No one, whom he pays for that purpose.

X Int. 165. Does he have one or more who assist without pay?

A. Yes, one.

X Int. 166. At the store, or factory?

A. At the store.

X Int. 167. Male, or female?

A. Male.

X Int. 168. In what way does he assist in the form business?

A. Sometimes with advice, besides helping the book-keeper when he is at leisure.

X Int. 169. He divides his labors between the form part of the business and the other business in which the plaintiff is engaged, then, does he?

A. Not exactly; that is to say, he does his own business and helps us in this or the other department when he has nothing else to occupy his time.

X Int. 170. Is he in the employ of the complainant generally?

A. No.

X Int. 171. But has desk room in the store?

A. Yes.

X Int. 172. To whom does he pay rent?

A. To no one.

293 X Int. 173. Does your father, the complainant, rent the premises in which this man is occupied or has a place?

A. He does, and has done so not less than twenty or thirty years.

X Int. 174. And this man is allowed a benefit because of his assistance from time to time, whether it be reduced rent, or otherwise?

A. Yes, which rent costs us nothing, except some inconvenience and crowding.

Adjourned to July 13, 9.30 a. m.

BOSTON, MASS., *July* 13, 1888.

Accounting continued.

Present, Messrs. Perkins and Tucker, for plaintiff; Mr. Dane, for defendants.

(Cross-examination of Mr. MORSS continued:)

X Int. 175. Were you solicited or called upon by Mr. Knapp for a conference in New York, or elsewhere, concerning the disposition of his form business?

A. Not directly, before Oct. 18, 1887.

X Int. 176. In what way did he call you or your father to New York?

A. Through Mr. Appleton as representing our cause in New York.

X Int. 177. Was the request on the part of Mr. Knapp by letter or note in writing?

A. I think not.

X Int. 178. And you were not present when Mr. Appleton was called upon, at the time the request was made?

A. No.

X Int. 179. Then, as a matter of fact, all you know as to this alleged request on the part of Mr. Knapp, is hearsay, is it not?

(Witness asks: Would what Mr. Knapp told me about that be hearsay? The master answers, No; to which answer of the master defendants' solicitor excepts.)

294 A. No.

X Int. 180. At any time prior to the interview at the Astor house, did Mr. Knapp invite you, or request you to invite your father, or any other person, for an interview concerning the disposition of his form business?

A. I don't remember that he ever did prior to that day.

(Defendants' solicitor asks all that part of the witness'- answer after the word "remember" be stricken out, as not responsive. Rule denied, and exception taken.)

X Int. 181. Your memory upon this matter is not very distinct, am I correct?

A. No.

X Int. 182. Is it distinct?

A. Yes.

X Int. 183. Then you know, as a matter of fact, that he did not invite you, or request you to invite your father, to that interview prior to the day of the alleged meeting at the Astor house, do you not?

A. To that interview, decidedly not.

X Int. 184. Had he invited either you, or your father through you, to hold an interview of any kind or character prior to the days of the meeting held at the Astor house, New York?

A. I think not.

X Int. 185. Who opened the interview at the Astor house at the time of the meeting referred to in your testimony?

A. The meeting was entirely informal so far as concerns the conversation which first took place, after which we gradually settled down to business, and I, therefore, cannot say who spoke first.

X Int. 186. Who first broached the subject to be discussed for which the interview was brought about?

A. That I cannot say.

X Int. 187. You represented your father at that interview, did you not?

A. I did, and Mr. Knapp expressed to me considerable disappointment that father was not there in person, saying that
295 when he arranged with Mr. Appleton for the interview, he understood that father was to be present in person.

(Defendants' solicitor moves to strike out all the answer after the words "I did." Rule granted.)

X Int. 188. In representing your father, you know, do you not, whether Mr. Knapp first took up the subject to be discussed, or whether you did?

A. At this particular interview, no, as I had seen Mr. Knapp before on that day.

X Int. 189. At the prior meeting, who first broached the subject under contemplation, you or Mr. Knapp?

A. I did.

X Int. 190. What way did you bring it up, giving the language used by you on that occasion?

A. The exact language I cannot give, but it was in substance that I had just come over to New York in father's stead, as he was unable to come personally on account of sickness, and asking him where we could meet and have a good chance to talk.

X Int. 191. Where did this first interview occur, and about what length of time did it last?

A. At Mr. Knapp's office, and probably did not exceed fifteen minutes' time.

X Int. 192. Then, if I understand, you did not discuss the subject which came up at the subsequent meeting at all?

A. The subject was mentioned, but not discussed.

X Int. 193. About what length of time after your first meeting together at the Astor house, did you commence upon the subject for which the interview was called to be discussed?

A. I should say about three-fourths of an hour.

X Int. 194. Were you present at the entire interview?

A. All the time, excepting something less than ten minutes, for, though I left Mr. Appleton, Mr. McPherson and Mr. Knapp together finally, the interview as such, closed upon my departure.

(Defendants' solicitor asks the master to strike out all that part of the answer after the words "ten minutes," as a proffered statement not called for by the question. Rule denied, and exception taken.)

296 X Int. 195. I ask you what length of time was occupied by you and Mr Knapp discussing the subject for which the meeting was called.

A. I cannot say just how much of the time we talked about this matter.

X Int. 196. Nor what was said concerning it?

A. I cannot, of course, repeat everything that was said on this matter during the five hours we were together.

X Int. 197. And you do not at this moment distinctly recollect whether you or Mr. Knapp first brought up the subject in question, at the Astor house meeting?

A. No; I think neither.

X Int. 198. Who do you think did?

A. I think it was Mr. McPherson, but I am by no means sure.

(Redirect examination of Mr. MORSS by Mr. PERKINS:)

R. D. Int. 199. Since your cross-examination on the subject of the cost of your dress forms, have you made any further examination of that subject for the purpose of verifying your figures, and if so, have you anything further to say concerning the cost of materials composing the dress forms?

A. Yes; I have figured the following items in a different way. The items figured are wire, tin, and castings and rings, in form like Exhibit Plaintiff's Form. The figures I obtain in each case, by taking with the utmost care the total of all the payments for each item during the year 1887, which year is included in the period of the accounting. This total in each case includes bills payable for the stock of each kind, Dec. 31, 1887, but of course does not include bills payable for the stock of each Dec. 31, 1886. In each case the totals so obtained were compared with a total obtained by figuring the total cost of all forms produced during the year, according to the estimate given in my testimony of items. The results were as follows:

Wire—my original estimate was shown to be $4\frac{3}{4}$ per cent. below the cost thus obtained.

Tin—my original estimate was shown to be $30\frac{8}{10}$ per cent. above the cost thus obtained.

297 Castings and rings, only for Exhibit Plaintiff's Form, my original estimate was shown to be $\frac{7}{10}$ of 1 per cent. above the cost thus obtained.

R. D. Int. 200. What do you mean by "form" in your last answer?

A. I mean Exhibit Plaintiff's Complete Form and Exhibit Plaintiff's Skirt.

R. D. Int. 201. Defendants' counsel has asked you whether any allowance was made for rent of factory or store in your estimate of costs. Please state just the condition of the factory rooms and the store space which has been used during the period of the accounting, and just prior thereto, and what its value would be based upon the value of the whole factory building and the store.

(The question is objected to on the ground that the witness has not been shown to be competent to testify as to the value of the premises.)

(Question admitted, and exception taken.)

A. In the factory not less than 85 per cent. of all the room used for our dress-form department during this period is room on the upper floor of our three-story wooden factory, which room had never been used, excepting as a store-room for refuse material, and which was, therefore, of no particular use to us before it was occupied by the dress-form department. The other 15 per cent. of space is room not required for our railing department on the lower floor, and consists of three or four small spots. In previous testimony I have estimated the total space as equivalent to one-half the upper floor, though the total floor area used for dress forms would not quite equal one-half the area of one floor.

The middle floor we let for the five years preceding April 1, 1887, for $800 per annum, at which price we calculated that we were making a profit. If we assume the upper floor, though by no means so strong as the middle floor, to be worth seven-eighths of the price received for the middle floor, the rental would be $350 per annum.

298 In the store in Cornhill, the office occupies one-eighth of the lower floor, and allowing the lower floor one-half the total rent paid for three floors above and for two-thirds of the basement, and if we assume that the dress-form department and Mr. McPherson's desk-room should pay one-half of the cost to us of the office, the charge for the dress-form department would be $110 per annum. The room devoted to storage of dress forms in the store does not exceed 5 per cent. of the second floor, which would only cost us $25 per annum. In regard to space for exhibiting dress forms, we keep only three forms on exhibition on the lower floor, and the charge for that room cannot be estimated at more than $25 per annum. I did not originally figure in any charge for office storage and show-room, for the reason that we now use no more room nor pay any more rent than we did before the dress-form business started, although we are doing at least 30 per cent. more business in our earlier departments now than we did five years ago, beside adding two other departments to our business, both of which take office room, and one of them more storage room in Cornhill than the dress-form department.

R. D. Int. 202. Are the spots so called on the first floor of your factory used exclusively for dress forms?

A. Excepting two spots, the total area of which does not exceed 200 square feet, no.

R. D. Int. 203. Could you let that space on the lower floor to other persons consistently with carrying on your other business there?

A. No.

R. D. Int. 204. Could you let the space in your store and office, which is used for dress-form business, to other persons and still carry on your other business there properly?

A. No.

R. D. Int. 205. Do you know what horse power is used by your dress-form business when working at your greatest capacity?

A. The power used in this department does not exceed three horse power. A careful estimate made by my father and myself, about Jan. 1, 1887, as a basis on which to figure charge to our tenant on our second floor for extra power, satisfied us that $65
299 per horse covered all the cost to us of producing the power which we were then supplying. This estimate was made to include interest, wear and tear, fuel account, and general expense.

R. D. Int. 206. Since your last examination as to items of cost, have you made any estimate for repairs, wear and tear of tools, machinery, etc., and if so, what is it, and how did you reach it?

A. My estimate was $100 per annum, based upon a careful consideration of the circumstances of the case, a knowledge of which I have acquired in the course of my intimate connection with the business.

R. D. Int. 207. Have you anything further to say about your original estimate of $300 for carting done by other teams than your own?

A. I undertook last night to compare my guess, that the expense of this item did not exceed $300 per annum, with the actual payments therefor; failing, however, to obtain satisfactory figures readily during the year 1887, I took the figures for the first four months of this year, being four months of the period of this accounting. This estimate showed that the expense of outside carting had been during that period at the rate of not exceeding $250 per annum, and upon comparison I found that during that four months we had made per week as many forms as on the average during 1887, and that we had shipped on the average per week 50 per cent. more forms than during 1887. I should, therefore, say that my guess of $300 was at least $50 too high.

R. D. Int. 208. What percentage of the carting done by your own team is for the dress-form business, and what is the total expense of such team per annum?

A. The total expense of our teaming with our own team does not exceed $800, and the work done by it for dress-form department does not exceed 12½ per cent. of the whole.

R. D. Int. 209. How many trips does your team make in the course of a week exclusively for the dress-form business between your factory and store?

A. I should say not exceeding on the average one trip in a fortnight, and then generally only when it does not happen to have other work to do.

300 R. D. Int. 210. How many trips does the team average weekly between the factory and store?

A. I cannot state exactly, as the number varies from day to day from one to four; but I should say that the average was certainly more than ten per week.

R. D. Int. 211. How much more expensive has your team been since the dress-form business was taken up than it was before?

A. Not exceeding 25 per cent., which increase is, however, not

due to the work done for the dress form, one-third as much as to the increase of our railing department, which takes most of the time of the team, though it is used to a large extent by each of two other departments, each of which occupies the team a great deal more than the dress-form business does.

R. D. Int. 212. Have you made any estimate of postage and stationery, and if so, what is it?

A. Yes. Postage, $100 per annum; stationery, $65 per annum.

R. D. Int. 213. Will you please state approximately as you can the amount which should be allowed for your services to the dress-form business, if your salary were to be divided up among the several departments to which you devote your services in proportion to the time which you devote to each?

A. Not exceeding $400 per annum.

R. D. Int. 214. Do you pay anything for help at the store other than what you have stated for work done in handling dress forms?

A. No.

R. D. Int. 215. Suppose the labor in the store, outside of what you have already allowed, were divided among the several departments, how much of the pay therefor should be applied to the dress-form business?

A. Not exceeding $100 per annum.

R. D. Int. 216. How much has the pay-roll for such labor as is mentioned in my last interrogatory increased on account of your taking of the dress-form business, and how many more men are employed than before, if any?

A. No increase either in pay-roll or men.

301 R. D. Int. 217. What sum did your father invest in the patent right relating to the dress-form business?

A. Not exceeding $10,000.

R. D. Int. 218. How many patents were bought by him, if you know?

A. I am absolutely certain.

R. D. Int. 219. More than one?

A. Yes; not less than three.

R. D. Int. 220. Will you now please state what sum is paid expressly for insurance of property in the dress-form business?

A. Nothing.

R. D. Int. 221. Suppose you take the proportion of insurance paid by your father, if there was any, of the property in the manufacturing business, which property of the dress-form business bears to all the property in his manufacturing business, to what would it amount?

A. Not exceeding $75 per annum.

R. D. Int. 222. Have you anything further to say about your estimate of the amount of waste in the dress-form business?

A. Yes. A careful consideration since I made my original estimate has satisfied me that an addition of 2 per cent. to the cost as given, which 2 per cent. I have had in mind since the first, is ample to cover it.

R. D. Int. 223. Can you state how many dress forms of each skirt

and full form, like the exhibits, which you made during the year 1887?

A.—

Wood post skirt	7,076
Like Exhibit Plaintiff's Skirt	16,551
Like Exhibit Plaintiff's Busts	5,465

R. D. Int. 224. On the basis of the estimates of the costs by the last method you pursued, how would the cost of the dress form like plaintiff's skirt compare with the cost which is shown by your original estimate?

A. The slight changes which have been made in regard to items according to the new method of calculating would tend to make a very slight reduction in the total of the estimate of items, which, however, is so small that for the purpose of estimating our profits I do not care to make any change.

302 R. D. Int. 225. Have you any change to make in the incidental expenses, which you fixed at ten per cent. on the costs? If so, state what, and explain fully why.

A. Yes, if the various items of general expense are to be charged against the costs, as given in my evidence this morning, such as storage, rent, power, insurance, cartage, superintendence, etc., I want to change my estimate of 10 per cent. to 15 per cent., which beside allowing for interest, will allow of an extra charge of $500 per annum for such expenses as I may possibly have omitted by mistake.

R. D. Int. 226. Will you now state what is the average net profit on skirt forms like plaintiff's skirt, which you made during the period of the accounting? Answer fully.

A. In my own opinion, 10 per cent. is enough to add to the estimate of costs in items, which would show a net profit of $1.18 each. If, however, 15 per cent. is added to the sum of costs in items, the profit would be reduced to $1.14 each.

R. D. Int. 227. How are you able to fix the average price at which the skirt forms were sold in order to determine the average profit?

A. In accordance with my promise, during the direct testimony, I took from the books a statement of the number of forms sold from Nov. 16, 1886, to April 30, 1888, and estimated what we should have received had the forms been sold at the wholesale prices before given, namely:

Like Exhibit Plaintiff's Complete Form	$4 50
" " " Skirt "	2 50
" " Wood Post " "	2 00

I compared this total with the total amount of cash received during the same time, as shown by our books, and found that the actual receipts were not exceeding 20 per cent. less than the wholesale prices above quoted.

I have, therefore, figured the average price that we received for the goods at 20 per cent. less than the wholesale prices, namely, for goods:

Like Exhibit Plaintiff's Complete Form	$3 60
" " " Skirt "	2 00
" " Wood Post " "	1 60

303 R. D. Int. 228. What was the average profit that you made on dress forms like Exhibit Plaintiff's Complete Form?

A. Adding 10 per cent. on the basis of my last two answers, profit, $2.00 each; adding 15 per cent., $1.93 each.

R. D. Int. 229. State the average profit made upon the wood post skirt during the period in question?

A. Adding 10 per cent. on same basis as last answer, profit 89 cents each; adding 15 per cent., 87 cents each.

R. D. Int. 230. X Int. 118 is as follows: "How many forms have you made and sold during the last twelve months?" Will you now please answer that question?

(The question is objected to on the ground that the question was ruled out by the master. Question ruled out and exception taken.)

R. D. Int. 231. X Int. 119 is as follows: "How large a lot or number of forms have been started at any one time during the last six months for construction?" Will you please answer that question?

(Question objected to because it has been once ruled out. Objection sustained and exception taken.)

R. D. Int. 232. Are you now ready and willing to answer the last two questions so far as you are able?

A. Yes; willing enough, though the limitations would have to be changed slightly before I could give any figures other than approximate.

R. D. Int. 233. Limitations of time, do you mean?

A. Time is one of them.

R. D. Int. 234. Referring to X Int. 41, and those immediately following it, have you during this examination made a test as to the way in which tin sheets are cut, so as to show the cost of the clips and the waste? If so, please state what you did, and the results.

A. At the factory, yesterday morning, I found how many clips from which the 3-eye clips are directly made could be cut, and are cut in practice, from one sheet of tin. Then I found just
304 how many clips are in practice cut from this strip; thus figuring the exact number of clips obtainable from one sheet. I did the same thing in regard to each of the other two styles of clips, and on this basis figured the cost of all the clips on one skirt, which cost was $2\frac{7}{10}$ cents per skirt, which is $\frac{3}{10}$ of one cent less than the figure given in my original estimate of items of cost, although the waste would in practice not be lost but would be worked up.

R. D. Int. 235. Did you or not in your last answer, in giving the costs, assume that the waste was wholly waste and not afterwards used at all?

A. Yes.

R. D. Int. 236. Referring to X Int. 58 and those immediately following it, in regard to the cost of the blocks or notches made by the plaintiff himself, before he adopted the plan of purchasing them elsewhere, is there any way by which you can inform the court as to how the cost of these articles when made by the plaintiff compared with the cost of such articles afterwards purchased by him, which last cost I believe you have already stated in your original estimate?

A. The cost to us since we began to buy the notches is a fraction more than what they cost us when we made them ourselves.

R. D. Int. 237. How do you know that?

A. From figures made at the time.

R. D. Int. 238. By whom?

A. By myself.

R. D. Int. 239. In answer to X Int. 74, speaking of the prices for wire, you say, "We may have paid a trifle more for a very small amount," can you tell how much more, and for what amount?

A. We may have paid 10 per cent. more for an amount which was certainly less than 10 per cent. of a year's supply.

R. D. Int. 240. How much would that extra 10 per cent. amount to in dollars and cents?

A. Not over $\frac{15}{100}$ of one cent per skirt.

R. D. Int. 241. Referring to X Int. 98 and those immediately following it, what does the threading of the nuts, central staff, button and the three rests cost you?

305 A. As I have before stated, we do not thread the central staffs. To thread the buttons and rests costs us nothing beyond the estimates already given, as it takes no stock to make the holes, and the labor is included in the contract price of twenty-three cents.

(Recross-examined by Mr. DANE:)

R. X Int. 242. How many of the items that you have testified about to-day, for instance, stationery, postage, power, etc., are stated from entries in the books pertaining to the form business of the complainant?

A. None, as none of these items were ever charged except in part to the dress-form account. I will, of course, except these figures, such as outside carting, which I stated were taken directly from the books.

R. X Int. 243. And as a matter of fact, that the form department of the complainant has not entered upon its books an account showing the actual cost for the carting?

A. The outside carting has appeared since some time before Jan. 1, 1888.

R. X Int. 244. I presume that what you have termed outside carting relates to teams not owned by the complainant?

A. Exactly so.

R. X Int. 245. State whether the books pertaining to the form

department of the complainant contain entries of the expense of the carting by the team owned by complainant.

A. No.

R. X Int. 246. In estimating the horse power used by the form department used by the complainant, did you, or your father in your presence, make a test by use of dynamometer or by the lifting of a weight, or how otherwise?

A. The estimate I made myself from my own knowledge of the power taken to drive the various machines and counters, only.

R. X Int. 247. Then, instead of an actual test, it was an estimate? and if the latter, explain your method of obtaining it.

A. It was an estimate, and could by no possibility be anything else, and I can only say that, to the best of my knowledge and belief, and after considerable experience in the estimation of
306 power required to drive such machinery, the estimate is large enough.

R. X Int. 248. What was the size of the piston area of the engine?

A. 50.26 square inches.

R. X Int. 249. What is the diameter of the piston and the length of its stroke?

A. Twelve inches stroke; piston eight inches in diameter.

R. X Int. 250. How many revolutions does the fly-wheel make a minute?

A. 285.

R. X Int. 251. The boiler carrying how many pounds of steam?

A. From 70 to 80.

R. X Int. 252. Do you furnish power from this engine for other purposes, and if yea, to what extent?

A. Yes. The total load on the engine is ordinarily in the immediate vicinity of 35 horse power.

R. X Int. 253. Whenever the room or office where you display the forms here in the city has been rented, what has been the highest rent ever received for it?

A. As the building is probably nearly a hundred years old, I don't feel competent to say. The highest price I ever knew of for the whole building, is the price we pay now, which is $3,500. I never knew of the room or office you speak of to be rented separate at any price.

R. X Int. 254. Is your office located on the second floor in the building?

A. As it is on a level with the street, I should call it the first floor.

R. X Int. 255. How many rooms on the first floor are distinct from the show room or office of the plaintiff?

A. The whole floor is in one room.

R. X Int. 256. How many stories in the building?

A. Four stories and basement.

R. X Int. 257. The first floor of the building is worth at least one-third as much in rental value as the entire remainder of the building, being in the locality where it is?

A. Yes.

307 R. X Int. 258. And something more than that, comparing it with other buildings in the same locality?

A. Yes.

R. X Int. 259. Do you wish to be understood as saying that the insurance policies taken out by the plaintiffs were not intended to cover any portion of the form business?

A. By no means.

R. X Int. 260. Yet the policies do not discriminate on their faces between the goods forming a part of the dress-form business and those of the other parts, do they?

A. No.

(Redirect by Mr. TUCKER:)

R. D. Int. 261. Do you keep a separate set of books for your form business?

A. We do.

R. D. Int. 262. What machinery at the factory, besides the form machinery, does the engine run?

A. Two heavy presses, half a dozen lathes, and several other machines, including a blower in our railing department, a woolen mill, consisting of three sets of cards, jacks, knitting machinery, pulling machines, and the other machinery usually found in such a mill, including two dusters and one rag-picker, also between 40 and 50 braiding machines for covering wire such as is used for electric lighting, with their take-ups fitted to handle wire as large as about ¼ inch in diameter (No. 4 American gauge), with the other machinery necessary to cover between three and four miles of such wire.

R. D. Int. 263. What machinery in your dress-form department is run by that engine?

A. There are two wire-straightening machines, one of which was not purchased until the middle of 1887. These two machines have not both been run together more than a third of the time in the last half of the year. Also three No. 2 Wheeler drop presses, and five or six small lathes. The presses and the lathes average to be idle certainly not less than 25 per cent. of the time.

R. X Int. 264. How many of the lathes referred to, used in the form department, are engine lathes?

308 A. None.

R. X Int. 265. The most of them are for drilling, are they not?

A. Yes, all of them.

R. X Int. 266. Do you not use an emery wheel or its equivalent for grinding off surfaces?

A. In making the feet on the wood-post skirt, the iron is cut up on one of the presses in the railing department, and one end of each foot is touched for a moment on the emery wheel in the railing department.

R. X Int. 267. Then, if I understand you, it is necessary to do some portion of the work, at times, in the railing department of

plaintiff's business, to enable the workmen to complete parts of the form, and such were not included in the list of items in your answer to R. D. Int. 263?

A. I certainly did not name these two machines.

R. X Int. 268. It becomes necessary, in the manufacture of the skirt form, to use a grindstone, and to have the use of such to enable the workmen to keep their tools in proper repair and condition for work, does it not?

A. Yes, and for that purpose we have a small foot-power grindstone in the form department.

R. X Int. 269. And consequently never use the power grindstone for the benefit of the form department?

A. Occasionally, yes.

R. X Int. 270. What is the diameter of the emery wheel used to grind the parts of the feet, previously referred to?

A. About twelve inches.

R. X Int. 271. Width of face?

A. From two to three inches, I should think; I have not measured it.

R. X Int. 272. Of what swing are the lathes that are used in the form department, horizontal?

A. Excepting one, the swing is eight or nine inches, and on that one the swing is ten, I think.

R. X Int. 273. Of whose manufacture are the wire-straighteners?

A. John Adt & Son, New Haven, Conn.

309 (Redirect by Mr. TUCKER:)

R. D. Int. 274. What is the daily average of the power used in the railing department on the dress-form work?

(The question is objected to on the ground that it is obvious from what the witness has already stated that all the machines used in the form department, or in the construction of dress forms, are necessary; furthermore, the witness has already stated that parts of the stock are put into the work, almost continuously, to keep up the manufacturing, and that the fact that portions of the machinery remain idle more or less, does not enter into the issues in the case, as this is usual in the manufacture of almost every known kind of goods in which machinery is used. The question is admitted, and exception taken.)

A. The exact answer I cannot give, but I do know that one-fifth of one-horse power is more than what is used.

R. D. Int. 275. What is the most power that is used at any one time in the railing department in the dress-form work?

(Objected to as immaterial, and the question withdrawn.)

EVERETT MORSS.

Subscribed and sworn to before me this 13th day of July, 1888.

E. E. MARVIN,
Master pro hac vice.

Adjourned to July 14, 1888, 9.30 a. m.

310 BOSTON, MASS., *July* 14, 1888.

Accounting continued.

Present, Mr. Perkins and Mr. Tucker, for complainant; Mr. Dane, for defendants.

Mr. APPLETON, a witness produced for complainant, sworn and examined by Mr. PERKINS:

Int. 1. What is your name, age, residence and occupation?

A. My name is John W. Appleton; my age is 21 years; I reside in Brooklyn, N. Y.; and my occupation is manager of Hall's Bazar Form Company.

Int. 2. How long have you been connected with that company, and what is its business?

A. Since April, 1886. Its business is the sale of Hall's dress forms.

Int. 3. What do you mean by the Hall's dress forms?

A. Plaintiff's Exhibits Skirt and Complete Form.

Int. 4. What business connection have you, if any, with Mr. Ruel R. Appleton, a witness in this case?

A. I am his brother, and manage his business for him.

Int. 5. How much time have you devoted since April, 1886, to the business of said company, and what have been your duties?

A. My entire time and my business have been to oversee the business and to direct and to solicit orders.

Int. 6. In what parts of the country have you solicited orders?

A. Eastern States, Central States, Western and Northwestern States.

Int. 7. In what order of time have you solicited in these several sections?

A. I first solicited in the Eastern States, and then the Central, and then the Western.

Int. 8. When you began soliciting in the Eastern States, what dress forms did you find in the market?

A. Knapp's and the Diamond.

311 Int. 9. When you began soliciting in the Central States, what dress forms did you find in the market there?

A. Knapp's.

Int. 10. When you began in the Western States, what dress forms did you find there when you first began soliciting there?

A. There were none, so far as I knew.

Int. 11. When, if ever, did you first become aware of other dress forms in the market in the Western States?

A. In the fall and winter of 1887, and spring of 1888.

Int. 12. Who, if you know, were managing the sale of the Knapp forms in the Eastern States in April, 1886?

A. I have heard that the Union Form Company, New Haven, was doing it.

Int. 13. Was there at that time more than one style of the Knapp form which you found in the market?

A. Defendants' form known as the "papier-maché" and the stationary skirt.

Int. 14. Was the papier-maché form a skirt form?

A. It was a full or complete form.

Int. 15. State whether or not there was any other full or complete form in the markets of the Eastern States in April, 1886, beside that and the Everett?

A. There was no one known as the plaintiff's complete form.

Int. 16. Whether or not at that time the Domestic Sewing Machine Co. was buying either of these forms?

(Objected to as leading, and withdrawn.)

Int. 17. State what concerns in New York city were selling the Knapp form in April, 1886, so far as you know.

(Objected to as presumptuous and leading. Admitted, and exception taken.)

A. Domestic Sewing Machine Co., Edward Ridley & Sons. That is all, to my knowledge, in the month of April, 1886.

Int. 18. Did you solicit in New York in April, 1886, and to what extent, if so.

312 A. I did; in the principal dry-goods stores.

Int. 19. Do you know to what extent the Knapp complete form was sold in New York in April, 1886?

A. From what I could learn, not very extensively.

Int. 20. At what time, if any, were the Knapp forms first sold to any considerable extent in the New York market?

A. In the spring of 1887.

Int. 21. What concerns brought them out at that time, if you know?

A. The Domestic Sewing Machine Co., Edward Ridley & Sons, Ehrich Brothers, H. Rausch, Demorest Fashion and Sewing Machine Co., and William Soll.

Int. 22. Whether or not, prior to the spring of 1887, you had sold any Hall dress forms to either of these concerns, and if so, to which of them, and what kinds of forms had you sold to them?

A. We had sold to all of them prior to the spring of 1887, both our complete and skirt form.

Int. 23. Please state what proportion of all the forms you sold in New York city prior to April, 1887, were complete forms.

A. About 18 or 20 out of 100.

Int. 24. State what proportion of all the forms sold since April, 1887, in the city of New York, were complete forms.

A. About 4 or 6 out of 100.

Int. 25. State what your experience has been, if any, in other cities of New York before and since April, 1887, as to the sale of dress forms?

A. In Brooklyn, N. Y., about the same proportions of full and skirt forms have been sold, both before and since April, 1887, as in New York.

Int. 26. State specifically what proportion of the complete forms

you sold before the spring of 1887 in Brooklyn, and what proportion you have sold since then there.

A. Before the spring of 1887 about 18 or 20 complete forms out of 100, and later and since the spring of 1887 about 4 to 6 out of 100.

Int. 27. State whether or not the falling off in the sale of complete forms was sudden or gradual.

313 A. When defendants' papier-maché form was introduced it was sudden.

Int. 28. What proportion of all the forms now sold in Brooklyn, N. Y., are full or complete forms?

A. About 4 or 5 out of every 100.

Int. 29. What efforts are you making to sell in New York at the present time, as compared with your efforts in the spring of 1886?

A. We are making more efforts.

Int. 30. What proportions of Hall forms now sold in New York city are complete forms?

A. About 4 or 5 out of 100.

Int. 31. What efforts are you now making to sell in New York city, as compared with those made in April, 1886?

A. Greater efforts.

Int. 32. State whether or not a trade in complete dress forms carries any other trade with it by the customs of that business, and if so, what trade and to what extent?

A. It does. People necessarily like to have but one account with a house, and not with two houses, on the same kind of business. The trade in complete forms carries the trade in skirt forms with it, to an extent that we feel it.

Int. 33. State in what Western cities you have introduced and sold the Hall form, and your experience as to the competition of other dress forms with it in these cities, particularly the competition of the Knapp form, if any?

A. In Pittsburg the demand for the Knapp form is growing, the one known as the papier-maché. In Cincinnati one of our best customers, M. A. Leeft, utterly refused to buy our complete since Knapp's complete form was first introduced in Cincinnati. In Louisville I found a house known as The Fair, claiming to have the exclusive agency for Knapp's forms, and saying that they were allowed to sell them at any price they chose. I solicited their order for our forms and received an order, but I refused to ship it, as they said they would not be dictated as to what they were to retail the goods for. In Kansas City I found Knapp's forms being sold by the Domestic Sewing Machine Co., and was informed by our agent in that city that the complete form the Domestic sold interfered

314 with his trade in our complete forms. In Omaha Knapp's forms are being sold by the Domestic's agents, and to what extent I could not learn definitely, but our agent in that city wanted us to bring out a papier-maché form.

In Minneapolis our trade in complete forms has been very good on account of the Knapp's not being on sale there. But since I visited that city I have been advised that they, the Knapps, have succeeded in placing their goods with a house there which is adver-

tising them extensively. In St. Paul I found the Knapp forms for sale by the Domestic agent there. As to the result of their business in them they would not inform me. In Milwaukee I found Knapp's forms on sale at one of the largest dry-goods houses in the city, and supposed to be the best. They gave me an order for our skirts, but said that they would have Knapp's complete form.

Our principal customer there urged me to bring out a papier-maché form at once, as his trade in our complete form was gradually dropping. In Chicago I found Knapp's forms for sale by several houses, one of which is known as The Fair, who sold Knapp's complete form at 86, and the Domestic Sewing Machine Co. in that city also displays the goods extensively. The Fair has refused to buy our complete, lately, as extensively as heretofore, claiming that they could do better in prices with the Knapp people, and that they could easily get all they wanted, for that matter, on consignment at ninety days.

In Des Moines, where the Domestic patterns are not sold, and they had no one to appeal to direct for the sale of their goods, we have been enabled to do a good trade in our goods, and the sale of our complete forms has averaged very good, that is, we were able to sell 12 out of every 48 forms.

In Indianapolis, our agent has utterly refused to buy our complete form of late, urging us to get up a papier-maché, as he was having calls for them. The Domestic agent, who sells Knapp forms there, informed me that he would not buy our forms, as he could get all the Knapp forms he wanted on consignment.

In Detroit, I noticed the Knapp form extensively displayed by the Domestic Company there, and that our sale in complete forms in that city is steadily decreasing, whereas the skirt forms are holding their own.

315 In Toledo, the Domestic agent informed me that he could get all the Knapp forms on consignment, and what he had in his store were there in that way, which he could return to the Cleveland office at any moment if he wished.

In Cleveland, our customer urged me to get out a papier-maché form at once, as he was losing sales to the Domestic Company there.

In Troy, N. Y., our customer, W. H. Freer, urgently requested to give him a papier-maché form at once, so that he might compete with the Knapp agent, who, he claimed, was pushing their papier-maché.

In Philadelphia, our customer, John Wannamaker, who, previous to April, 1886, bought our complete forms largely, has since utterly refused to buy them, as he said he could buy Knapp's very much cheaper than ours. The Domestic agent, Mr. Jordan, in Philadelphia, sold our forms exclusively until the Domestic Company found out that he had ours on sale, when they shipped him a quantity of Knapp goods without his placing an order prior thereto, since he sold our goods exclusively. A. C. Richel, one of our best customers, who used to sell our goods exclusively, has been selling Knapp forms extensively, and says he can get all he wants on consignment, whereas our rule is payment in 30 days' time.

In Baltimore, we at one time sold to J. G. Blaisdell exclusively, and upon our placing our goods with other people in that city, Mr. Blaisdell turned around and put in the Knapp forms, and claims to be selling a great many of them.

Int. 24. What proportion of all the Hall forms sold by you in the cities which you have named in your last answer, were complete forms, before the introduction of the Knapp form into any given city?

A. About 18 or 20 out of every 100.

Int. 35. How general is that experience?

A. That experience has been general, principally in the Western cities before the introduction of Knapp's forms.

Int. 36. Is there any Western city in which you are now selling the Hall forms in which the Knapp forms are not on sale?

A. Des Moines, Iowa.

316 Int. 37. What efforts are you now making to sell the Hall dress forms in the cities which you have named, as compared to what you have done heretofore?

A. We are making more.

Int. 38. To what extent do you find the Everett form sold or offered for sale in the several sections of the country where you have personally solicited for the sale of the Hall forms?

A. I rarely find it on sale at all.

Int. 39. What comments upon it by dealers, or comparisons of it with complainant's and Knapp's forms do you hear from your customers and dealers?

A. They seldom speak of them.

Int. 40. Mention any place, if you can, outside of New York and Brooklyn, where you have seen the Everett form on sale?

A. I have not seen it on sale, and only hear of customers having it when our customer informs us.

Int. 41. Compare, if you can, the degree of competition between the complainant's forms and each of the forms, Everett's and defendant's forms.

A. The competition is greater with the Knapp form on account of these being identified with the Domestic Sewing Machine Co. all over the country, who advertise them all over the country in the fashion papers—the small skirts given away by their agents—and which is known as "the style."

(Cross-examined by Mr. DANE:)

X Int. 42. Is the Hall Bazar Form Co. a corporation?

A. No, sir.

X Int. 43. Who are members of the concern?

A. R. R. Appleton only.

X Int. 44. Then you are in the employ of R. R. Appleton?

A. Yes.

X Int. 45. And a brother, are you not?

A. Yes.

X Int. 46. Who at "The Fair" in Louisville stated to you that they were allowed to sell Knapp's forms at any price they chose?

A. When entering the store I asked to see the proprietor, and the person pointed out to me as the proprietor told me that
317 he was the exclusive agent of Knapp's forms, and was not restricted to prices as to what he was to retail the forms for, and he gave me an order.

X Int. 47. But did he state to you the prices at which he was selling the Knapp forms? and if yea, name the prices so given.

A. He did not.

X Int. 48. Did the house in Milwaukee state to you the price for which they were selling the Knapp forms?

A. They did not.

X Int. 49. Did either one of the houses in Chicago tell the prices for which they were selling the Knapp forms, and if yea, which one?

A. The Fair said they sold the complete form for $6. The other houses named did not tell me.

X Int. 50. Who in "The Fair" told you this, and what conversation did you have with this person concerning the matter?

A. I asked to see the buyer who bought the forms, with whom I only spoke a few moments. I solicited his order for forms, and he did not wish any at that time, and said: "Why don't you people allow your customers to sell down as low as the other form people?" I asked him what he sold Knapp's for, and he said $6 for that known as the complete form. I withdrew, as another traveler was waiting his turn to see him, and the buyer evidently was anxious to see the other man and said nothing to me further.

X Int. 51. Then the gent. referred to only told you the price at which he sold the complete forms, and said nothing about the price he paid for such forms?

A. He said he could buy them cheaper than ours, that was all; how much cheaper he did not tell me.

X Int. 52. At what price did you offer to furnish the complete form of the complainant?

A. At the same prices that we had theretofore been supplying him, and at the prices which we charge every one—$54 per dozen.

X Int. 53. Are you perfectly familiar with the wholesale prices for which complainant's full form and the skirt form have been sold for the period since April 27, 1886?

318 A. Yes, sir.

X Int. 54. Please state them.

A. Complete forms, $54 per dozen; skirt forms, iron posts, $30 per dozen; skirt forms, wood posts, $24 per dozen.

X Int. 55. State whether you have adhered strictly to these prices named without any change during the period referred to in my previous question?

A. In the United States, we have.

X Int. 56. As the managing agent for your brother, do you or not restrict your customers in the prices at which such forms are sold at retail?

A. I do; not allowing them to sell below our advertised retail price.

X Int. 57. They do sometimes, do they not, sell below the rates to which they are restricted by you?

A. I have never been able to ascertain personally whether they sell below our advertised retail price.

X Int. 58. "The Fair" in Chicago is the one located between State and Dearborn streets, is it not?

A. I don't know what streets it is located between; but I know there is one entrance on State street.

X Int. 59. Another entrance opposite into another street?

A. I paid no particular attention to any entrance but the one at which I entered.

X Int. 60. You have never visited the place either before or since the time you conferred with the so-called buyer?

A. Never.

X Int. 61. "The Fair" is located within about 100 yards of the Palmer house, or very near the office of the Domestic Sewing Machine Company, is it not?

A. I do not know how far it is from the Palmer house; it is on the same side of the street with the office of Domestic Sewing Machine Company.

X Int. 62. And within the same block with the Domestic Sewing Machine Co.?

A. I did not measure the distance and I did not pay particular attention to whether or not it is in the same block.

X Int. 63. Did you enter another place known as The Fair, on State street, Chicago?

319 A. I entered but the one.

X Int. 64. Why did the several parties on whom you called in these various cities wish your people to produce a papier-maché form?

A. So that they might not miss any sales.

X Int. 65. Was not the form furnished by your house, termed in this suit Plaintiff's Complete Form, as satisfactory to them as the papier-maché of the defendants?

A. They never complained as long as they were not in competition with the complete form, known as Knapp's papier-maché.

X Int. 66. Then the parties must have considered the form of the defendant superior.

A. I do not know that they did.

X Int. 61. Do you know otherwise?

A. I know that anything advertised and pushed by the Domestic Sewing Machine Co., necessarily carries some weight with it, and people who have been accustomed to buy only the Domestic's paper patterns accept their recommendation of the Knapp form and buy it instead of ours.

X Int. 62. Then, if I understand you correctly, the customers take the forms of the defendant in preference to those of the complainant simply because of the standing of the Domestic Company before the public?

A. Any article that the Domestic may push necessarily carries some weight with it, and people accustomed to deal with the Do-

mestic will buy Knapp's complete form instead of ours. That is the only reason that I know of.

X Int. 63. Do you think the Domestic Company would be equally successful if they advocated the Diamond or the Everett forms?

A. As for the Diamond, it does not come into that competition with our complete form or the defendants, and with the Everett I think they would.

X Int. 64. The Diamond form is not provided with a bust, if I understand you?

A. It is not.

X Int. 65. What explanation did you make to W. H. Freer, of Troy, when he requested you to give him a papier-maché form at once?

320 A. I made no explanation as to the papier-maché, and he gave me a small order for our complete forms.

X Int. 66. When he urgently requested you to give him a papier-maché form, as you have stated, did you not attempt to satisfy him by an explanation of some sort, and if yea, what?

A. I told him that we could not give him one.

X Int. 67. Concerning Wannamaker, Philadelphia, did he tell you the prices for which he could buy defendants' form?

A. He did not, but said he could do very much better than the prices we quoted, and that they (Knapp) put them down in Philadelphia for him, that is, freightage free.

X Int. 68. State the name of the person with whom you had this conversation, when it was, and in what place.

A. Mr. J. F. Collins; in January, this year, if I remember correctly; at Wannamaker's store, Philadelphia.

X Int. 69. Do you mean to be understood in any of your answers previously given, that Mr. Collins told you that he could buy the defendants' forms for less price than he could those of the complainant, not including the freight thereon?

A. Yes, sir; that is, the defendants' form known as the complete.

X Int. 70. But not the skirt?

A. We never conversed regarding defendants' skirt form.

X Int. 71. The sole reason why A. C. Rishel dropped your form and took up the form of the defendants, in your opinion, is simply because he could get a little more time in which to make payment?

A. He has not given up our forms, but sells both ours and defendants'.

X Int. 72. Have the defendants' forms, so far as you know, been sold to Blaisdell, of Baltimore, at prices less than the prices for forms of the same class made by the plaintiff?

A. I do not know at what prices defendants' forms are sold to him at.

X Int. 73. What, of your own knowledge, has been the cause of the competition between the complainant's and defendants' forms?

A. When our forms were once introduced in a town, and a
321 customer was making money out of them, it was a very easy matter for the defendants to induce him to allow them to

send a consignment of their goods. In this way a saleswoman would allow the customer to select whichever form the customer chose, and there were a great many reasons why the customers would buy the defendants' skirt form, because they sold and are still selling some of their skirts down as low as $1.25.

X Int. 74. Then, if I understand you, one of the reasons of the competition is the fact that some of the forms are being sold at a less price than those of a similar class sold by the plaintiff?

A. Of the skirt forms; yes.

X Int. 75. Mention the instances within your own personal knowledge of such sales?

A. The Household Sewing Machine Co., in N. Y., and Henry Bristow, in Brooklyn; the latter man has a skirt form in his window with a placard on the form marked $1.25.

X Int. 76. Did Mr. Bristow tell you he was selling such forms for $1.25, if not, who in the store did tell you so?

A. Mr. Bristow did not, nor any one else in his store. I made my statement only from the card. Every one in business infers that such is the fact.

X Int. 77. Will you swear that the form upon which you saw the figures $1.25, was placed is precisely the same in mechanical structure as any of the forms made or sold by the defendants prior to January last?

A. I will.

X Int. 78. Describe it.

A. It is a small short skirt form with an elastic band simply around the waist, and when closed up is not much more than two feet in length.

X Int. 79. Have you made the best explanation that you are capable of giving respecting the form referred to as to the details of its structure?

A. I might add that it has simply one band.

X Int. 80. And this answer, taken with your last answer, is the best description you can give of the form referred to?

A. Of that particular form, yes.

X Int. 81. How about the Household Sewing Machine Co.
322 selling forms at less rates than those of the complainant? Explain the construction of such as they sell at the rates stated.

A. I saw them myself, personally, at one time, sell one of the defendants' forms for $1.25. I did not notice the construction of that particular form.

X Int. 82. State the date when you saw such sale made.

A. I am unable to say exactly on what day of the month it was, but it was some time during the month of January, 1888.

(Redirect examination by Mr. PERKINS:)

R. D. Int. 83. Have you examined the defendants' statement in this case, and if so, will you state to which of the customers named therein plaintiff's forms were sold before the spring of 1887?

(Question objected to as not based upon anything in the cross-examination of the witness. Admitted and exception taken.)

A. I have examined the list. The names appearing on the list which I here produce were our customers prior to January, 1877, as follows, viz.:

John Wannamaker, Philadelphia.
Fletcher & Swart, Newark, N. J.
E. B. Jordan, Philadelphia, Penn.
A. C. Rechel, " "
C. F. Fiske, Baltimore, Md.
J. G. Blaisdell, " "
Miss M. A. Laft, Cincinnati, O.
S. Oppenheimer & Bro., Washington, D. C.
Brown O. Conner, Fall River.

R. D. Int. 84. Does defendants' complete form accomplish any other object or possess any other adjustment than those of the complainant?

A. No.

R. D. Int. 85. Is there any superiority, either in material or construction, in defendants' complete form over the plaintiff's?

A. There is not.

323 R. D. Int. 86. What have you to say as to the qualities of a papier-maché bust as compared with a wire bust?

A. The wire bust is folding, and for that reason is considered better.

(Question and answer are both objected to on the ground that the bust features of the two forms are not in controversy in these cases. Question admitted and exception taken. Question withdrawn.)

JOHN W. APPLETON.

Subscribed and sworn to before me this 14th day of July, 1888.

E. E. MARVIN,
Master pro hac vice.

Adjourned to Aug. 2d, 10 a. m.

BOSTON, *Aug.* 2, 1888.

Accounting continued.

Present: Messrs. Perkins and Tucker for complainant, Mr. Dane for defendants.

Complainant offers in evidence Complainant's Exhibit Defendants' Complete Dress Form and also Complainant's Exhibit Defendants' Skirt Form heretofore so marked by the examiner.

(Defendants' counsel objects to the admission of the exhibits offered, as it does not appear that they are of the kind and combination introduced in evidence and referred to on final hearing, upon which the present decree is based.)

Complainant's solicitor offers in evidence a certified copy of the evidence of complainant and defendants used upon final hearing in this case, which is marked Complainant's Exhibit Proofs upon Final Hearing.

324 It is consented that the record may be referred to and used without printing herein, the same as if originally introduced in this accounting.

Mr. BOWEN, a witness introduced by the complainants, sworn and examined by Mr. PERKINS:

Int. 1. What is your name, age, residence and occupation?

A. My name is Eugene F. Bowen; age, 33; residence, Providence, R. I.; and occupation, merchant.

Int. 2. In what class of goods do you deal?

A. Well, I handle a number of classes; among them is Hall's adjustable dress form.

Int. 3. How long have you been handling Hall's adjustable dress forms?

A. About three years.

Int. 4. Where have you been handling and selling those dress forms?

A. Rhode Island and Connecticut.

Int. 5. Have you sold them in any other place or places; if so, where?

A. I have sold them in Fall River and New Bedford; those are all the places I remember now.

Int. 6. Have you sold them in Connecticut at all, and if so, where?

A. I have sold them all through Connecticut; I control Rhode Island and Connecticut.

Int. 7. What acquaintance have you with the various adjustable dress forms in the market and which have been in the market since you have been in that business?

A. Hall's, Knapp's, and the Diamond.

Int. 8. (Question repeated.)

A. The Diamond I cannot tell much about; I have not seen much of it to speak of. Chiefly Knapp's, I have known of that two years, and possibly longer.

Int. 9. Is there any competition between the adjustable dress forms in the markets in which you have sold your goods, or has there been during the period since you began to sell dress forms?

325 A. The competition lies wholly between Knapp's and Hall's. At times it has been quite fierce.

Int. 10. What competition, if any, has there been in the city of Providence, between the Hall and the Knapp forms?

A. There has been considerable competition.

Int. 11. Will you state the history of the competition in Providence?

A. First, Knapp's forms were sold across the street from me. They moved a few stores below me, in the direction from which trade comes. People coming up street, as most of the trade comes that way, would see these forms either in the window or out on the door stoop, and go into the store to see them. Many customers, especially the gentlemen who were buying for their wives and families, not knowing about the forms, would buy those when their

wives had sent them for Hall's, and they repeatedly told them that Hall's was not kept in Providence. Then, when they put this form in the market for $2.25 and advertised it for such, it very materially hurt our trade, as they repeatedly asked for a cheaper form than what the others had been sold at. On the whole form our trade has dropped off very much, been dropping steadily all the time, and on the skirt form it has increased very rapidly.

Int. 12. In what way did the agent of the Knapps in Providence advertise the reduction in the price of forms?

A. The only way I have seen is by cards placed on the forms giving the prices, either in the window or at the door.

Int. 13. What has been the history of the competition between the Hall and the Knapp forms in other places in the sections where you sell the Hall form?

A. That I cannot say; all I can say is that our sales have dropped in the full forms and increased on the skirt form through Rhode Island and Connecticut. I control those States; most of the cities and towns.

Int. 14. What business connection have you with Mr. Morss, the complainant in this case?

A. I simply have the agency of these forms in Rhode Island and Connecticut, and buy the forms of him.

Int. 15. Whether or not the Knapp form is on sale in the places where you have stated that the sales of the Hall complete
326 form have been reduced since the Knapp form came into the market?

A. That I don't know.

Int. 16. What do you mean when you say that the sales of the complete form are less; do you mean the total sales are less, or that they are less in certain places?

A. Total sales; also less in Providence. The Providence is retail trade, and the rest of the section is wholesale trade.

Int. 17. Is there any competition between the Hall dress form and the Everett dress form, in Rhode Island and Connecticut?

A. I don't know of any.

Int. 18. Is there any between the Hall dress form and the Diamond or La Moine dress form, in either of those States?

A. None that I know of.

Int. 19. Has there been any competition between the Hall form and either the Everett or Diamond, during any of the time you have been connected with the trade?

A. I know of none but a few Diamonds which have been on sale; I don't know how many—competition amounts to nothing on that. I don't know whether there was one or a dozen; I can't tell that.

(Cross-examined by Mr. DANE:)

X Int. 20. Can you give the names of all the parties who deal in the Everett forms, or the Diamond, in the locality where you have been doing business?

A. I cannot give the names of all the parties; all I know of is

one party. His name is Mr. Humphrey, doing business at about 279 Westminster street, Providence.

X Int. 21. You have stated that all through your localities the sale of the so-called Hall complete form has been losing ground; why is this?

A. Knapp's forms are gotten up in a very showy shape, they are bronzed and have a papier-maché bust which really looks more substantial than the wire of Hall's.

X Int. 22. And this is the principal reason why the Knapp complete form is superseding the Hall complete form? Is such the fact?

327 A. Yes.

X Int. 23. State why it is that the so-called Hall skirt form is increasing in number of sales steadily in view of the fact that the Knapp skirt forms are upon the market in the same localities?

A. On account of being very light and portable and closing in a compact form.

X Int. 24. And this is the only reason that you can state; is it not?

A. Well, I can give other reasons.

X Int. 25. Give them.

A. That the wires on the Knapp form are soldered to the circumferential wires.

X Int. 26. Any other?

A. No, that is all.

X Int. 27. When was the Knapp form placed upon sale in your locality at the price of $2.25 each?

A. I could not tell you.

X Int. 28. Was it a full form or a skirt form?

A. A skirt form.

X Int. 29. Was it within the last six months that you first saw it, or two years ago?

A. Well, that is very indefinite, between six months and two years, a difference of 18 months.

X Int. 30. Answer objected to as irresponsive and question repeated.

A. I cannot tell you just when—I should say in the neighborhood of—I should say some time this year, within the last six months.

X Int. 31. Can you swear that you saw such form on sale for the price of $2.25 at any period prior to May, 1888?

A. No, sir.

X Int. 32. Can you describe the details of the construction embodied in the form which you say was put on the market or on sale at the price of $2.25?

A. Perhaps I can from this (referring to the form marked Defendants' Skirt Form). The feet have three narrow strips. It has a hollow tube, which these feet are joined to, and a rod with a screw-thread on it, which drops into this hollow rod or pipe.

328 It turns one way to make it larger, and the opposite way to make it smaller. To make it larger around the hips, there

is a knurled knob serving as a handle. By screwing this, it opens out at the hips. The wires which form the skirt are very similar to these of Hall's, instead of being like this (pointing to the Exhibit Plaintiff's Skirt), practically the same, a little different shape, that is all. These braces here (pointing to Exhibit Complainant's Skirt), which connect with the ribs are twisted in some manner to form a loop about the center. They are fixed here in some way, if I remember rightly, I have only seen this in the store in the window and outdoors. I can't tell you just how the brace arrangement was made. The braces in the hip portion of the skirt are some way twisted to form a loop. They might be soldered on to form a loop, but I should judge they were twisted. There is a brace goes from that hip brace to a knurled knob at the top so as to enlarge the waist.

X Int. 33. Then, if I understand you correctly, you have not personally examined the Knapp form, which you say is sold for $2.25.

A. I have had the form and just looked at it a few minutes; not to study it very closely.

X Int. 34. Have you had very much acquaintance with mechanical structures of different kinds, whether of forms or otherwise?

A. No; not very much.

X Int. 35. Do you understand the structures of the various dress forms, about which you have testified and referred to, sufficiently to enable you to explain the several structures to the court in all their respective details, including their manner of operating?

A. That depends upon how thorough an explanation one would want. I think I could explain their manner of operating the forms; I certainly could in a few minutes' time. I know enough about the forms so I could tell whether it was a Knapp, Hall, Diamond, or Everett.

X Int. 36. I asked you concerning the details of the several structures; how about that?

A. I could explain the structures in the same way. I think I could explain the structure of the forms. It is something
329 that you have to look into thoroughly in order to explain explicitly, in order to understand it thoroughly.

X Int. 37. As a dealer in forms for about three years, or nearly so, are you not able to readily describe these structures appearing in the different forms to which you have alluded in your testimony this morning?

A. I think that I have explained the Knapp forms.

X Int. 38. How many different forms containing different combinations or factors have you ever seen that were made by or known as the Knapp form?

A. One full form and three skirts.

X Int. 39. Were these three skirt forms on the market, so far as you know, two years ago?

A. Not that I know of.

X Int. 40. Were those three skirt forms upon the market last May of the present year?

A. One of those skirt forms I cannot tell you much about. Two of them I know were upon the market.

X Int. 41. Describe, if you please, the two forms which you think were upon the market prior to May, 1888, giving the details of the two structures and how combined.

A. That one that I have described, and this other style of form (pointing to Exhibit Defendants' Skirt Form).

X Int. 42. Then, if I understand you, you can give no complete description of the elements contained in one of the skirts?

A. It is similar in style to this (pointing to Exhibit Defendants' Skirt Form). There is a different brace arrangement at the top at the waist.

X Int. 43. Now, if I understand you correctly, the competition between the Hall or complainant's form and that which you have termed the Knapp, is caused mainly by the advantage that the Knapp agent secured by changing his store to a point on the street where its business was done to catch your customers, or what would otherwise be your customers, and the fact that the Knapp forms were bronzed or otherwise more highly finished than the Hall form of complainant?

A. Those are some of the advantages but not wholly. It does not make any difference. You can sell more or less of them if
330 you have got good salesmen,—the mere fact of their being in the market for sale, more or less of them would be sold whether there was any value or not.

Int. 44. The reason stated in your last answer coupled with the former, are all that you know which causes the competition?

A. There may be more reasons but I don't think of them now.

Int. 45. Did you ever sell forms of other make other than the Hall or complainant's form?

A. Yes, I have sold a few of Knapp's.

X Int. 46. But no others?

A. No, sir.

X Int. 47. You say there has been considerable competition in Providence between the Hall and the Knapp form business; have you stated on your direct examination all that you know about the competition referred to?

A. Well, competition would come in advertising. There are a great many things in the way of competition. Advertising the mere fact of having an article on sale so that people would see it; one form sold leads to the sale of another,—salesmen who get ladies who would talk an article up.

X Int. 48. Then, if I understand you, the competition is due largely to the manner in which the sales are made, by talking the one or the other of the forms up and the other down; or in other words, one salesman or saleslady asserting that the form he or she is offering for sale is the best, and that of competitor is not so good, and *vice versa*.

A. That is one of the competitions in trade. It has a great many.

X Int. 49. How does it apply to the form business in the competition previously referred to by you?

A. What do you mean, please?

X Int. 50. Whether this rule that you have stated in part and substantially repeated in one of my previous questions, applies in the case of the competition which you have testified to, in Providence?

A. Yes, it applies in Providence.

X Int. 51. Is there any other feature that makes competition great, other than those already mentioned by you?

A. There are many features which make competition great, which things I should have to look into and study.

331 X Int. 52. But you cannot at this moment think of any others than those already stated?

A. No, sir.

X Int. 53. In whose store did you *say* the Knapp form with a tag or placard representing that it was sold at $2.25?

A. Either Mr. Young's or Miss Watson's. Miss Watson had the store formerly, and Mr. Young married Miss Watson. When they were married I cannot tell you.

X Int. 54. How many forms did you observe that were placarded in a way representing that such were sold for $2.25?

A. I could not tell whether there were different forms placarded each day or whether they were the same forms.

X Int. 55. What reason can you give to support your statement that the total sales in Providence are less now than formerly?

A. I have not made that statement.

X Int. 56. Have you not already stated in substance that your sales are less now than formerly in Providence?

A. No, sir.

X Int. 57. You have stated, have you not, that your skirt form was increasing, am I correct?

A. Yes.

X Int. 58. Why is it?

A. Well, there are many reasons; good forms, and by advertising and pushing.

X Int. 59. Any others that you know of?

A. There are lots of reasons, probably, I don't think of them now.

X Int. 60. Mention the next principal reason?

A. Location, where they are sold, different stores they are in, the class of people who sell them, the way they are advertised, how they are advertised, and in what manner they are advertised.

X Int. 61. And you think the chief advantage gained, and the increased sales of the Hall skirt form are due principally to the facts stated in your last answer?

A. I do.

(Redirect examined by Mr. PERKINS:)

R. D. Int. 62. Have you heard of any other persons who
332 have the Everett forms for sale than the one you have mentioned?

A. I have not said anything about the Everett.

R. D. Int. 63. Did you not say that one Humphrey was a dealer in the Everett form?

A. No, sir.

R. D. Int. 64. What form did Mr. Humphrey deal in?

A. The Diamond.

R. D. Int. 65. Have you heard of any person who was selling the Everett form during the period you have been in business?

A. No, sir.

R. D. Int. 66. Will you examine the Exhibit Defendants' Form C, and state whether you have seen the same on sale in Providence?

(Objected to on the ground that the form referred to has not been before the court, neither has it been adjudged to be an infringement of the plaintiff's patent, which forms the base of this suit; and for the further reason that it is a form invented and patented subsequent to the suits in which the witness is now testifying; and for the further reason that the exhibit has not been formerly introduced in evidence, neither has it been hitherto alluded to by any witness, but simply produced before the examiner along with others on his order and request.)

(Question admitted, and exceptions taken.)

A. This is the style of form that was on sale, which I have testified was sold for $2.25.

R. D. Int. 67. Which of the Knapp skirts, to which you have referred in your testimony, were on sale in Rhode Island and Connecticut two years ago?

A. I have not testified that Knapp's forms were on sale two years ago.

R. D. Int. 68. When were Knapp's forms first put on sale to your knowledge in Rhode Island?

333 A. I cannot tell you just the date; it is fully two years ago.

R. D. Int. 69. Which forms were put on sale two years ago?

A. That skirt form (referring to Exhibit Defendants' Skirt Form), and that full form (referring to Exhibit Defendants' Complete Dress Form).

R. D. Int. 70. Have they been in the market in Rhode Island continuously since that time?

A. Yes.

R. D. Int. 71. Have they been on sale in Providence continuously since that time?

A. Yes.

R. D. Int. 72. What features, if any, are there in common between the Hall and the Knapp forms which bring them directly into competition?

(Objected to as leading.)

(Admitted and exceptions taken.)

A. By opening and closing—by making them larger or smaller. Without that there would be very little competition. Then again,

one other competition would be the way they are gotten up; the way they are finished.

R. D. Int. 73. Suppose there were no means of adjusting the Knapp form in all directions; that is, expanding and contracting it circumferentially in all directions, but only means for opening in one direction like the Everett, what competition, in your opinion, would there be between the Hall and the Knapp form?

A. The competition would be very small.

(Recross-examined by Mr. DANE:)

R. X Int. 74. Explain the direction in which the Everett form opens, and the means by which it is accomplished?

A. I cannot explain the means. Never saw enough of the forms to know; in fact, I have never examined them carefully.

R. X Int. 75. Then, if I understand you correctly, any form adapted for circumferential adjustment at two or more different
334 points along the length of rib, would be considered by you, if on the market, a competing form, because of the features referred to in the previous part of my question?

(Question objected to as indefinite in that it does not specify whether the points on the ribs are at the top or bottom or whether they are opposite each other.)

(Question admitted.)

A. Any form that you can adjust so as to get different measurements at the hip, waist, and around the bottom, the bust, neck, and many places in fact. Any form which you can make those adjustments to would be detrimental to any one's business dealing in forms.

R. X Int. 76. Since defendants' form C has been placed before you, have you called to mind, or can you now state, when you first saw one like it?

A. Some time this year, that is all I can say.

R. X Int. 77. Will you swear that it was prior to June of the present year?

A. Yes; I will.

R. X Int. 78. Will you swear that it was prior to the 30th of May, 1888?

A. Yes.

R. X Int. 79. Will you swear that you saw it prior to the first day of May, 1888?

A. No, sir.

R. X Int. 80. Did you see it before the 15th day of May, 1888?

A. I don't know what day I saw it, sir.

R. X Int. 81. Where did you first see one like it?

A. At the store I told you about awhile ago, corner of Moulton and Westminster streets.

R. X Int. 82. The name of the party?

A. I don't know; it was that Young and Watson affair.

335 R. X Int. 83. Did you visit Humphrey's place of business personally?

A. No, sir.

R. X Int. 84. Then you had no personal knowledge of what he did in amount of business in the sale of the Diamond form?

A. No, sir.

R. X. Int. 85. Is the form to which your attention has been called, marked Defendants' Form C, the form that caused you the trouble because of the price?

A. Yes.

R. X Int. 86. And that is the only one?

A. That is the only one on price.

R. X Int. 87. With your experience in the handling and selling of dress forms, is it or not your opinion that the form last referred to is cheaper in cost of construction than plaintiff's skirt form?

(Objected to as witness is not competent to testify as to the cost of construction.)

(Question ruled out and exception taken.)

R. X Int. 88. Is the defendants' form referred to more simple or complex than plaintiff's skirt before you?

(Objected to as indefinite.)

(Question admitted.)

A. I think that the Hall form is more simple and easier in adjustment. If it was more simple in adjustment it would be in construction.

(Redirect by Mr. PERKINS:)

R. D. Int. 89. Whether or not a trade in complete dress forms, carries with it or has any effect upon any trade in any other class of forms; if so, state what.

336 A. Do you mean have the effect in sale of skirt forms or not; is that the idea?

R. D. Int. 90. That is the idea.

A. Most assuredly it would. Every sale of a form would have a tendency to make a sale for another one. They might not want a full form and would use a skirt form.

R. D. Int. 91. What is the custom of dress-form dealers as to carrying different manufacturers' goods?

(Objected to as incompetent, as it has not been shown that he understands the custom of others in said business.)

(Question admitted.)

A. Different people would think differently on that. It is a question which is very hard for the best business man in the country to decide on any class of goods. You cannot tell whether it is policy to keep all the different lines or not, or adhere to one line and push that for all it is worth. No two people would agree on

that. My idea would be to carry one style and push that for all it is worth.

R. D. Int. 92. Do you know what is the custom among dress-form dealers with respect to the variety of goods they carry?

A. I know how it is in my section, and that is that agents carry but one line. I would not allow it and they do not do it.

R. D. Int. 93. Do you know what the custom is of the agents of the Knapp and other dress forms?

A. No, sir; I don't.

R. D. Int. 94. Do you know what it is in Providence?

A. They don't carry but one style.

Mr. JAMES SHEPARD, a witness produced by the complainant, sworn and examined by Mr. PERKINS:

Int. 1. What is your name, age, residence and occupation?

A. James Shepard; New Britain, Conn.; age, 50 years; my occupation is solicitor of patents, and I am also frequently called upon to testify as an expert in patent causes.

Int. 2. What knowledge have you in mechanical inventions
337 and letters patent therefor, and what experience have you had in testifying in suits for infringement of letters patent?

A. I was formerly a mechanic for a period of about twelve years, and I have been a solicitor of patents ever since 1866. I have also during the last thirteen or fourteen years, frequently each year, testified as an expert in causes pertaining to patents, and by reason of these occupations I have daily had occasion to compare mechanical devices with letters patent, and with each other.

Int. 3. Are you acquainted with letters patent No. 233,240, on which this suit was brought?

A. I am.

Int. 4. Have you testified in any suit brought for the infringement of said patent? If so, what?

A. I have; in three suits, I think. I don't remember the names. One was against Knapp, and the other was against New Haven parties.

Int. 5. Did you testify as an expert witness in the suit of Morss *vs.* Ufford, in the Massachusetts district?

A. I testified in a suit on this patent in the Massachusetts district.

Int. 6. In the suit of Morss *vs.* Ufford, how many exhibits were introduced in evidence to prove the infringement of the defendants?

A. There was only one exhibit illustrating the defendants' device.

Int. 7. Will you please examine the Exhibit Defendants' Complete Dress Form, and compare it with the exhibit referred to in your last answer?

A. It is the same, I believe, in every respect.

Int. 8. Please examine the Exhibit Defendants' Skirt Form and compare it with the Exhibit Defendants' Complete Dress Form?

A. It is the same every way, with the exception that the waist form is omitted and the standard is made correspondingly shorter.

Int. 9. Please compare the Exhibits Defendants' Complete Dress Form and Defendants' Skirt Form, with the mechanism set forth in the second claim of the letters patent 233,240, before referred to?

338 A. Both of these exhibits contain the combination referred to in the second claim of said patent; that is to say, they each have a central standard and a series of ribs which constitute a skirt form, and at the upper end of said ribs or skirt form a double set of braces and sliding blocks and rests, or their equivalents, all in combination, as set forth and described in the patent. The collars upon the standard, to which the inner ends of the braces are hung, are of a somewhat different form, and the upper block, to which the braces are hung, revolves upon a rest, which rest is fixed to the standard. The lower block, to which the lower set of braces are hung, is a nut, and the standard which passes through it is screw-threaded to match the nut. The screw-threads on the standard and nut serve the purpose of a rest to secure the block in its proper position on the standard, while screwing the nut up or down on the standard affects the vertical adjustment of the block. The fact that the upper block is pinned to the standard I consider immaterial, in view of the fact that the adjustment can be effected by sliding only one of the blocks. These differences which I have pointed out I consider immaterial, because the screw-threads are the equivalents of the rest, and because the combination as a whole operates in the same way and produces the same result. For these reasons, I am of opinion that the exhibits inquired about, both of them, contain the combination described in the said Hall patent and referred to in the second claim thereof.

Int. 10. What portions of the ribs constituting the skirt form are affected by the adjustment of the mechanism of the claim referred to, which you say you also find in the two exhibits?

A. Substantially the entire skirt form, although the double set of braces is applied directly to the hip portion of the skirt form and is intended more particularly for adjusting at that end. The lower end of the skirt form is provided with a single set of braces, which also assist in adjusting the lower portion of the skirt form. When, however, the skirt form is adjusted by the double set of braces at the upper end of the hip portion, the skirt form is raised or lowered in the act of adjustment, and consequently adjusting the double set of braces alone will adjust the entire skirt form to a certain extent.

Int. 11. Suppose you dispense with the lower set of braces
339 entirely, both in the mechanism shown in the patent and the exhibits referred to, will the entire skirt form be adjusted by the double braces?

A. In the exhibits referred to, the double set of braces are so hung that the skirt form would collapse unless the lower set of braces, or some other support, is placed at the lower end. As to the construction shown in the patent, I think practically the same result would follow, but that would depend somewhat upon the

tightness of the joints and the distance apart of the pivots by which the outer ends of the braces are connected to the pivotal lugs. If the joints are perfectly tight and the pivotal outer ends separated far enough from each other, the entire skirt form might be supported and adjusted on a double set of braces alone. When, however, a single set of braces, or other support, is placed at the lower end of the skirt form, as shown in the patent, it is wholly immaterial whether the pivots of the double set of braces are close together or widely separated.

Int. 12. Suppose you remove either set of the double braces in the device of the patent, or the exhibits referred to, what would be the result?

A. The form would drop down to the floor and could not be adjusted.

Int. 13. In the operation of the exhibits referred to, either in expanding or contracting them, whether or not the same proportions of the skirt form are maintained?

A. Yes; that is to say, the skirt form is expanded in all directions from the central standand.

Int. 14. Please turn to the Exhibit Everett Patent in the defendants' record in this case, and compare its operation and effect with the device of the complainant's patent and the exhibit before referred to.

A. The skirt-holder, aside from its standard as described in this patent, consists of an adjustable block made of two semicircular parts with depending flanges to form a partial skirt support, and the two parts of this block are adjusted to and from each other by sliding on a horizontal arm and held in its adjusted position by means of clamp screws. This does not permit an adjustment of the entire perimeter of the skirt-supporter; in other words, it can
340 be adjusted only across a given diameter and has no other adjustability so far as expansion is concerned. This is entirely different from the adjustable or expansible skirt form of the Hall patent. The adjustment of the waist block, as before stated, is upon a horizontal bar and it has nothing in the nature of a double set of adjusting braces.

(Complainant's counsel offers in evidence a dress form and asks that the same may be marked Complainant's Exhibit Everett Form.)

Int. 15. Please examine the Exhibit Everett Form and compare it with the mechanism of the claim of the Everett patent before referred to?

A. I find that the Exhibit Everett Form contains an adjustable waist block and retaining flanges substantially such as is shown and described in said Everett patent and referred to in the claim thereof. I am aware that the form is of merely the length of the skirt, the form being thus extended by a downward extension of the retaining flanges of the Everett patent. Clearly, the upper end of the form, which depends from the waist block in this model, constitutes the retaining flanges of the Everett patent, and the fact that they extend downwardly to form a greater portion of the skirt form does not in

any way detract from their uses as retaining flanges. For these reasons, I am of opinion that the Exhibit Everett Form contains the mechanism referred to in the claim of said Everett patent.

Int. 16. In the operation of the Exhibit Everett Form and of the device of the Everett patent, are the same proportions of the structures maintained?

A. No, instead of expanding or contracting a round form, the expansion changes a round form into an oval one.

Int. 17. Please examine the Exhibit Defendants' Form C, and compare its structure, its operation and effect with the structure, operation and effect of the mechanism of the second claim of the complainant's patent.

A. Said exhibit contains the mechanism referred to in said second claim, and has substantially the same structure and mode of operation and effect. In addition to the differences already noted, in referring to Complainant's Exhibit Defendants' Skirt Form
341 and Defendants' Complete Dress Form, I find that the double set of braces in this Defendants' Form C, are unequal in length, and that the upper braces are hinged to the lower set of braces at a point inside of the outer ends of the latter. This I consider a difference of form only, because the two sets of braces still stand at different angles, and they are in fact, opposing sets of braces connected in the same way to prevent the form from collapsing. By adjusting this double set of braces it will be seen that the operation is the same and that they adjust the skirt form in the same way and by the same means.

Int. 18. Please answer the last interrogatory with respect to the Exhibit Defendants' Form B, instead of Defendants' Form C.

A. This Exhibit Defendants' Form B, contains the same combination. In its double set of braces the fixed rest and block is at the lower end, and the vertically adjustable block is connected with the upper set of braces; but this difference is immaterial. The braces, like Exhibit Defendants' Form C, are hinged together at a point inside the outer ends of the upper brace; but these differences are mere matters of form and do not prevent the double set of braces from supporting and adjusting the skirt form, in the manner shown and described in the Hall patent and referred to in the second claim thereof.

Int. 19. Please answer the last interrogatory with reference to the Exhibit Defendants' Form A.

A. The Exhibit Defendants' Form A has connected to the upper end of the ribs which form the skirt portion, rigid ribs which project upwardly and form the bust portion or waist portion and the double set of braces, which are the same as the double set of braces in defendants' form B, is placed near the extreme upper end of the ribs which form the combined waist and skirt forms. I find that by adjusting this double set of braces alone, the entire skirt form is adjusted to a certain extent, and these double sets of braces at the extreme upper ends of the ribs also serve to prevent the form from dropping down out of place. For these reasons, I am of opinion that Defendants' Form A fully and completely embodies the

mechanism described in the Hall patent and referred to in the second claim thereof.

Int. 20. Suppose you remove one set from the double braces in either of the Exhibits Defendants' Forms A, B, C, what would be the effect?

342 A. The combination would be disorganized, that is to say, the ribs would fall down and could not be sustained in place or adjusted.

Int. 21. Suppose in defendants' dress forms and in defendants' forms A, B, C, you make either of the slides fast to the standard, would the mechanism for expanding the form then be operative?

A. It would not.

Int. 22. Are you familiar with the dress form known as the Diamond or Le Moine, and if so, do you know whether same contains the mechanism of any claims of any letters patent?

A. I am not conversant with the names by which the various forms are known, but I know of a dress form which might properly be designated as the Diamond, and I find the form which I refer to described in the letters patent to Richardson, No. 343,729, dated June 15, 1886, and the first claim of said patent, in my opinion, clearly covers the dress form which I have seen, and which I presume was manufactured under this patent, and if any form is called the Diamond form, I think this is the one.

Int. 23. Please examine the letters patent to John Hall, No. 243,703, dated July 5, 1881, for an adjustable dress form, and state whether the bust portion of either of defendants' dress forms contains the inventions set forth in either of the claims thereof?

(The question is objected to as improper, and for the reason, among others, that the suits in which the witness is now testifying are not based upon the patent referred to, neither is it proper to consider such at this examination or in this stage thereof, it being wholly immaterial, so far as this investigation is concerned, what the defendants' form contained in the way of patented improvements, and do not appear in the pleadings or complaints in these suits.)

(Counsel for the complainant states that he asks the witness the question for the purpose of showing that the defendants' waist portion does not contain the devices of the patent referred to in the interrogatory as bearing upon the question of damages recover-

343 able for the infringement of the letters patent in suit, for if the said waist portion contains the subject-matter of any claim of any other patent owned by the complainant, he possibly could not in this action recover the entire damages caused by the sale of the entire dress form, as he contends he has a right to do. He does not ask the question for the purpose of proving an infringement of said patent, and expressly disclaims that purpose.)

(In view of the explanation made by complainant's counsel, counsel for defendant insists that the question is improper and incompetent; that the witness has not shown himself qualified to state in what way, neither to what extent the defendants' complete form in-

terferes with the sale of the complainant's form. Such inquiry should be instituted and secured from those having personal knowledge of the sales and the direct causes of the competition between complainant and defendant in the sale of the goods.)

(Question admitted, and exception taken.)

A. Neither of the forms inquired about contain the mechanism or combination referred to in either claim of said patent.

Adjourned to August 3d, 1888, at 9.30 a. m.

BOSTON, FRIDAY, *August 3d*, 1888—9.30 a. m.

Accounting continued.

Parties present as heretofore.

It is stipulated by counsel for the respective parties, that printed Patent Office copies of specifications and drawings of letters patent may be introduced in evidence by both parties with the same force and effect as original letters patent.

344 (Counsel for complainant offers in evidence letters patent to Richardson, No. 343,729, dated June 15, 1886, and the same is marked Complainant's Exhibit Richardson Patent; also letters patent to John Hall, for an adjustable dress form, No. 243,703, dated July 5, 1881, and the same is marked Complainant's Exhibit Hall Patent, 1881.)

(The exhibit last offered in evidence is objected to as immaterial and irrelevant.)

(Also letters patent to John Hall for an adjustable dress form, No. 269,851, dated January 2, 1883, and the same is marked Complainant's Exhibit Hall Patent, 1883.)

Int. 24. Please examine the last-named exhibit patent and compare the same with the waist portion of the Exhibits Defendants' Complete Dress Form, and Defendants' Form A, and state whether or not you find the devices of the claims of said patent embodied in the waist portions of said exhibits?

(The question is objected to as improper, and for the reason, among others, that the suits in which the witness is now testifying are not based upon the patent referred to, neither is it proper to consider such at this examination, or in this stage thereof, it being wholly immaterial so far as this investigation is concerned, what the defendants' form contained in the way of patented improvements, and do not appear in the pleadings or complaints in these suits; and it is further objected to on the ground that by the opinion of the court, the second claim in question is held to relate only to the hip portion of the skirt portion of the form.)

(Question admitted and exception taken.)

A. Neither of said exhibits contain the devices referred to in either claim of said patent.

345 Int. 25. Please look at the Exhibit Defendants' Form A, and state what would be the effect in the operation of the

double braces at the neck, if their length should be increased or diminished.

(Question objected to upon the ground that it is not the question as to how the form might be altered or changed to do or not to do certain things, and therefore it is inadmissible.)

(The master asks: Mr. Perkins, how do you claim that that is relevant?)

(Mr. PERKINS: The witness has testified that the form A contains the combination of the second claim of the patent in suit by combining with a rigid rib extending from the top to the bottom of the entire form a set of double braces, which are placed at the extreme upper end of said ribs. In the form in question, he has testified that the operation of the double braces operated the waist portion of the form, and I now wish to know what would be the extent of the operation of the waist or hip portion by changing the dimensions of said double braces testified by the witness to be combined as in the patent in suit.)

(Question admitted and exception taken.)

A. It would merely change the extent or range of adjustment of the entire form which is purely a matter of degree.

Int. 26. Whether or not the same range of adjustment would be obtained in the Defendants' Form A, by increasing the length of the double braces as is obtained by the double braces of the patent and the double braces of Exhibit Defendants' Complete Dress Form, which are located at or near the waist of the form?

A. It would.

(Cross-examination by Mr. DANE:)

X Int. 27. If the braces in the neck portion of the bust in Exhibit A were to be removed, what would be the effect upon the skirt portion of the form?

346 A. The ribs would drop down out of place so that they could not be adjusted or used.

X Int. 28. You have made answer to the eleventh Int., referring to certain results under certain circumstances to Defendants' Complete Dress Form and Defendants' Skirt; does that answer apply to Exhibits A, B and C, to which your attention has been called during your examination?

A. It does.

(Redirect examination by Mr. PERKINS:)

R. D. Int. 29. Please examine the defendants' record of the evidence taken in this case and the exhibits introduced herein, and state whether you find in any of the patents shown in said record or in said exhibits, any skirt structure which is capable of expansion and contraction in all directions from the central standard, except those in the Exhibits Defendants' Manufacture; and if so, what?

A. I do not find any such skirt form.

(Recross-examined by Mr. DANE:)

R. X Int. 30. Do you not find an equivalent therefor in any of them?

A. I do not.

JAMES SHEPARD.

SAMUEL N. UFFORD, a witness produced by the complainant, sworn and examined by Mr. PERKINS:

Int. 1. What is your name, age, residence and occupation?

A. My name is Samuel N. Ufford; 60 years of age; reside in Boston, and my business is now, and has been for the last twenty years, manufacturer of and dealer in dress and figure forms.

Int. 2. What adjustable dress forms have you sold while you have been in business?

A. We have sold the Everett, the Knapp, and the Hall and a few, a very few, of the Diamond.

347 Int. 3. Which of these was first in the market?

A. The Everett.

Int. 4. State the order in which the others followed.

A. Then came the Hall, then the Knapp, then the Diamond.

Int. 5. Between which of these forms, if any, is there any competition, or has there been, since January, 1884?

A. So far as I know, there is very little competition between any except the Knapp and the Hall.

Int. 6. Do you know to what extent the Everett form was sold in Boston, in 1887?

A. No, I have no means of knowing; but I think but very slightly, comparatively.

Int. 7. Do you know to what extent the Diamond form was sold in Boston, in 1887, as compared with former years?

A. I have no means of knowing positively.

Int. 8. How much did you hear about it in the trade during the year 1887, as compared with what you heard of it in former years?

(Defendants' solicitor objects to the question, as it calls for hearsay, which is incompetent, and also as leading)

(Question admitted, and exception taken.)

A. I probably heard more of it in 1887 than in former years, as there was a natural increase in the sales of all kinds of forms.

Int. 9. What qualities, if any, do the Hall and Knapp forms possess, which bring them into competition more with each other than with the other styles of forms which you have mentioned?

A. The expansive quality.

Int. 10. What do you mean by the expansive quality?

A. Producing the various sizes required in dressmaking use.

Int. 11. Did not the Everett form have the adjustability to all the sizes required for dressmakers' use?

A. Only partially.

Int. 12. Will you look at the Exhibit Everett Form, and state what it is, if you know.

348 A. That is an Everett form, the essential part of it.

Int. 13. Of what does the other part or parts consist?

A. A bust making the form complete.

Int. 14. Of what material is the bust made, and how was it enlarged, if at all?

(Defendants' solicitor objects to the question as immaterial.)
(Question admitted and exception taken.)

A. Made of wire, and enlarged by expanding the waist laterally.

Int. 15. Was it connected with the skirt in any way, and if so, how?

(Objected to as immaterial. Admitted and exception taken.)

A. I think it was by a band, but I have forgotten. I think by a band, the same as on the skirt. They are not detachable in use, it is all one and moved together.

Int. 16. Do you know at what date you began to sell the Knapp forms?

A. It was very soon after the date of the patent. I don't know as I can tell when that was.

Int. 17. Up to what time did you continuously sell the Knapp forms?

A. Up to the time of notice from the court to discontinue.

Int. 18. Do you know whether the sale of the Knapp dress forms, in Boston, increased or diminished at any time while you were selling them?

(Defendants' solicitor objects to the question as the style is not specified, when it is known that they make many styles, many of which would not be within the scope of the decree in these cases.)

349 (Complainant's solicitor responds: I mean Knapp's forms like Exhibit Defendants' Complete Dress Form and Defendants' Skirt Form.)

A. It is pretty hard to tell. There is a natural increase in the sale of forms of all kinds.

Int. 19. Was there as a matter of fact, an increase of your sales of the Knapp forms referred to in the last question, between the time when you began and the serving of the notice on you from the court?

A. I could not sell any other then, of course.

Int. 20. You do not understand the question. I mean between the time you began to sell the Knapp and the time you stopped selling them; was there any increase of sales?

A. Yes, certainly.

Int. 21. Suppose the Knapp form did not possess the adjustability to all sizes, such as you have testified it possessed in common with the Hall, what, in your opinion, would have been the effect on the sale of the Knapp form?

(The defendants' solicitor objects to the question, as calling for

opinions as to facts, when the facts are capable of being presented as such, and the examiner is asked to rule out the question.)

(The question is admitted and exception taken.)

A. Its adjustable feature gives it its value, everybody knows that. Otherwise it is inferior to other forms which we and other folks make, which are not patented.

Int. 22. What proportion of profit on the Knapp form is due, in your judgment, to the devices which make it expansible in all directions and adjustable to all sizes?

A. I think I have answered it before, when I answered the other question, substantially.

Int. 23. I do not understand that your preceding answers have stated what part of the profit was due to the devices named,
350 but that you have simply testified that the Knapp form was inferior to certain others if deprived of certain devices. Will you now answer the last question in the light of this understanding?

A. That is a pretty comprehensive question. I will answer it as well as I can, and make it explicit. I do not know what profit they make on their goods.

(Plaintiff's solicitor interrupts by saying: Now, Mr. Ufford, be sure that you understand the question.)

The success of the Knapp forms is entirely owing to their adjustability.

Int. 23. Are you one of the defendants in the suit of Morss *vs.* Ufford *et al.*, for the infringement of the patent in suit in this case?

(Defendants' solicitor objects to the question, as irrelevant and immaterial.)

(Question admitted, and exception taken.)

A. As I understand it.

Int. 24. Do you know who defended that suit, and at whose expense it was done?

(Defendants' solicitor repeats objection as to last question. Question admitted, and exception taken.)

A. I do not, personally; no, I don't know who.

Int. 25. State whether or not you did?

(Same objection, ruling, and exception.)

A. I did not.

Int. 26. Did you have any conversation with the defendants in this case, or either of them, about the defense of the Ufford case referred to, if so, what was it?

A. They assured me that it would be attended to without any trouble or expense to me.

351 Int. 27. Who was the other defendant in the Ufford case?

A. My son; S. N. Ufford & Son were the defendants.

Int. 28. What, if anything, was done by you or by your son, to your knowledge, about the defense of the Ufford case, after the defendants in this case assured you they would take charge of it?

A. When the writ was served on us, it was duly forwarded to the Knapps.

Int. 29. To whom did you refer by the word "they," in your answer to Int. 26?

A. Knapp and Hague.

Int. 30. Did both of them talk with you at that time?

A. Not together.

Int. 31. Did they separately?

A. Principally Mr. Knapp.

Int. 32. Which one?

A. Which Knapp?

Int. 33. Yes.

A. The inventor, as I understand it; the inventor of the Knapp form.

(Cross-examined by Mr. DANE:)

X Int. 34. Tell the court just what you heard in 1887, and what prior thereto, respecting the Diamond form and the sale thereof?

A. I have no definite knowledge.

X Int. 35. Then, if I understand you correctly, you have no personal knowledge of what was sold or done with such forms during the period covered by my previous question?

A. No; I have next to no knowledge as to the Diamond form. Are the Diamond and Le Moine forms the same?

X Int. 36. What knowledge have you of the Le Moine form covered by the period referred to in my previous question?

A. I don't know whether Le Moine and Diamond are the same.

X Int. 37. What personal knowledge have you concerning the manufacture, sale or use of the Everett forms for the period prior to January, 1888?

352 A. I knew nothing of their manufacture. I, with others in the city, sold a few from time to time.

X Int. 38. Who are the others referred to?

A. I think that it was the Domestic, and some woman on Washington street whose name I have forgot.

X Int. 39. But you are not certain whether it was the Domestic or some other concern?

A. I am positive.

X Int. 40. Where was it doing business at that date?

A. I think on Washington street.

X Int. 41. Give the exact date?

A. I can't give the date.

X Int. 44. Nor the year?

A. Approximate.

X Int. 45. State it approximately.

A. Well, previous to the date of the Knapp patent, several years.

X Int. 46. Now tell us the date of the Knapp patent.

A. I have got to go and look to see, haven't I? I can't remember the date.

X Int. 47. Do you know how many patents Knapp has issued in his name?

A. I do not.

X Int. 48. Can you give the dates of any of them?

A. I cannot without reference.

X Int. 49. Do you mean to the patents themselves, or records thereof?

A. I mean both.

X Int. 50. Do the Domestic have a store or office or place of business in Washington street at the present time?

A. Not that I know of.

X Int. 51. When was the Domestic last doing business in Washington street, of your own knowledge?

A. Impossible for me to tell definitely.

X Int. 52. What can you say as to the requirements of the dressmakers respecting the adjustability of dress forms beyond what you have stated in your direct examination to-day?

A. Adjustable forms are considered indispensable to a well-equipped dressmaker.

353 X Int. 53. You mean by that in contradistinction to a non-expansible form. Am I correct in my inference?

A. That is the meaning.

X Int. 54. And this, coupled with your former statements in this case, are all that you can state respecting the dressmakers' requirements as to the use of these forms?

A. So it appears to me.

X Int. 55. In what respect was the Everett bust about which you have testified, similar to that marked as an exhibit in this case, complainant's complete form?

A. Very little, except the partial expansion.

X Int. 56. In what respect was it dissimilar?

A. It could not be folded.

X Int. 57. What do you mean by folding?

A. It was made rigid and intended to be kept rigid.

X Int. 58. Is the Hall bust, marked complainant's complete form, adapted to be folded?

A. Partially so; yes.

X Int. 59. Was the Everett bust adapted to be partially folded?

A. Not that I know of.

X Int. 60. Was it not made so that it might be expanded and contracted, to some extent?

A. It was.

X Int. 61. And by means that the operator might vary the size thereof, diametrically?

A. Yes, diametrically only. I should say, laterally.

X Int. 62. To what extent does the Hall bust operate in the manner referred to in your last answer?

A. It expands circumferentially, doesn't it?

X Int. 63. Is that all?

A. No, that is not all?

X Int. 64. What other way?

A. The shoulders can be raised or lowered. The breast portion can be likewise expanded separately; it can be detached from the skirt form at the waist; the neck can be expanded, and the waist can be lengthened or shortened at pleasure, changing the altitude, thereby, of course.

X Int. 65. But if I understand you correctly, the Everett
354 bust was not provided with all the conveniences for adjustment mentioned in your last answer; am I correct?

A. No Everett form that I have seen; there may be improvements in it since.

X Int. 66. Does the bust portion of Complainant's Exhibit Defendants' Complete Dress Form and the bust forming a part of the figure marked Defendants' Form A, contain the several adjustments mentioned and specified in your answer to X Int. 64?

A. I have no knowledge of the form marked Defendants' Form A; that is, if it is different from the ones I have sold and have knowledge of; defendants' complete form I have knowledge of. It does not have the general adjustments of the Hall bust.

X Int. 67. Then, if I understand you correctly, the Knapp bust and the Everett bust were more nearly alike than the Hall bust?

A. That is so.

X Int. 68. And the bust forming a part of the Everett form was also detachable from the skirt portion, was it not?

A. It was not made to be used detached.

X Int. 69. It was, however, detachable, was it not?

A. Not except by violence; it was not designed to be used separately.

X Int. 70. Then, in this respect, it was more nearly like the Complainant's Exhibit Defendants' Complete Form, and like that marked Defendants' Form A?

A. That is so.

X Int. 71. Can you at this moment recall to mind the date at which you first began to sell Knapp's forms?

A. I cannot at this moment.

X Int. 72. When did you first begin to sell the Hall forms?

A. I could not tell at this moment.

X Int. 73. You are selling the Hall forms at the present time, and nearly ever since the notice was served upon you, to which you have previously referred?

A. Yes, we are.

X Int. 74. But stopped the sale of the Knapp forms simply because of the notice from the court, previously referred to?

A. Yes, the notice stopped me, as it should; shouldn't it?

X Int. 75. What do you mean by the expression "as it should," in your last answer?

355 A. It don't seem prudent to disobey the injunction of a court.

X Int. 76. Had it not been for that notice, then, so far as you now know, you might be dealing in the Knapp forms at present?

A. I think it is likely.

X Int. 77. With your experience in dealing in the Hall and Knapp forms, which of the two kinds were received by the trade with the most favor?

A. It would seem that there was more call for the Hall than there was for the Knapp.

X Int. 78. I am asking you to state facts within your own personal knowledge, and therefore would like a more definite answer to the question.

A. I don't sell to the trade to any extent. The Hall being better adapted to individual use is more largely in demand for reason of its compactness, convenience and less cost.

X Int. 79. Do you refer in your last answer to the skirt portion of the two forms, or the entire figure?

A. The skirt portion.

X Int. 80. How much more convenient is the Hall skirt form for compactness and convenience than the skirt forms of the defendants?

A. A majority of ladies who are the purchasers, choose the Hall skirt form on account of its compactness; they prefer it.

X Int. 81. (Defendants' solicitor objects to the answer as irresponsive, and the question is repeated.)

A. I have to be governed by the ladies' opinion, they being the users, and they prefer it.

X Int. 82. What opinion do the ladies give you from time to time when selling them the two forms in question?

A. Some like one on account of peculiarities and some another.

X Int. 83. Name the principal peculiarities.

A. With some ladies, space is everything, almost, and so some will cho-se the most compact, the majority, and that is the first thing that I ascertain as to their convenience. If told they have plenty of room, then some other kind is mentioned.

X Int. 84. Please explain your meaning as definitely as you can, contained in the last clause of your last answer?

356 A. In that case we prefer to make them an individual form to their own size which does not expand, in which case we could give them a more graceful fit, our specialty being, making forms to order.

X Int. 85. Under whose patents do you make your special forms, when made to order?

A. They are not patentable.

X Int. 86. Is not the skirt portion of the defendants' forms as compact as the complainant's forms?

A. It is not.

X Int. 87. Why not?

A. It is not capable of being folded.

X Int. 88. Then in your opinion the reason why the Knapp form does not sell as readily as the Hall, is due chiefly to the fact that the latter can be folded and the other cannot?

A. Chiefly to the fact that it is more expensive and the most in-

convenient thing on account of the space required to keep it when not in use.

X Int. 89. What do you mean in your last answer by the Knapp form being more expensive than the Hall? Is it because the price of the Knapp's forms is higher than the Hall or complainant's forms?

A. They are necessarily more expensive and sold at a higher price.

X Int. 90. Then, if I understand you correctly, in your opinion, the public prefer the Hall form, or complainant's form, rather than that of defendants chiefly for the reason stated in your answers to X Ints. 88 and 89; is that so?

A. Yes; the majority of ladies seem to require a skirt form which folds up compactly.

X Int. 91. And it matters not particularly how that folding is secured, if capable of being folded or closed up in a compact form similar to an umbrella?

A. It does not. In deciding on the purchase they are governed largely by the representations made to them.

X Int. 92. By the salesman?

A. Yes.

X Int. 93. So that, in your opinion, it is not so much in the peculiar construction of any dress forms as it is in the capabilities and shrewdness of salesmen in offering forms on sale?

357 A. In some cases.

X Int. 94. Mention the character of the cases in which rules apply in selling where such forms are sold strictly on their merits?

A. They may all have merits and demerits, and the demerits are sometimes left out in selling.

Adjourned to Aug. 4, 9.30 a. m.

BOSTON, *Aug.* 4, 1888.

Accounting continued.

Parties present as heretofore.

(Cross-examination of Mr. UFFORD continued:)

X Int. 95. When keeping the Knapp forms for sale, did you or not at the same time, or a portion thereof, sell the Hall for the complainant?

A. I did.

X Int. 96. In keeping the two forms referred to in my previous question, what was your method of presenting the two kinds to the party or parties wishing to buy?

A. I usually asked the customer what were their requirements, and if they had any previous knowledge of forms?

X Int. 97. What next, after such customer or customers explained their wants and knowledge?

A. I usually asked if it was for individual use, or family use for dressmaking. Generally they wanted information; they required to be posted as to the merits of the different forms.

X Int. 98. How did you post them?

A. By expatiating on the merits of each as they seemed to require.

X Int. 99. Please explain to the court just what you would say to a customer in want of a form for each of the purposes previously mentioned by you when expatiating upon their merits and demerits.

A. I usually ascertained whether it was for home use, individual use, family use, or dressmaking in general.

358 X Int. 100. (The answer is objected to as irresponsive, and the question repeated.)

A. In showing the Hall form I usually mentioned the convenience and compactness of it, ease of transportation, facility of forming any required size, the less cost; for demerit, want of gracefulness and shape, lack of firmness of the waist. As to the Knapp form, firmness of the waist line, facility of adjustment, symmetry in shape, substantial foot on castors—that is the substance of it. For individuals, where ladies have facilities for storage, we recommended our own manufacture, which cost less than either of the others, and gives a graceful, natural figure. This kind was not patented. Next was the Diamond, so called, which was rarely alluded to.

X Int. 101. Did you keep the Diamond in stock while keeping the Hall and Knapp forms for sale?

A. Not usually, only occasionally.

X Int. 102. Of what material were the special forms made by you, and how adjusted, if at all?

A. Those were skirt forms that I spoke of. They were made of wire. They were adjustable only in height.

X Int. 103. What response, if any, would your customers make, from time to time, after you had expatiated on the merits and demerits of the Hall and Knapp forms?

A. Usually favorable; occasionally one would be exchanged for the other.

X Int. 104. Do you wish to be understood as saying, in your last answer, that your customers would usually respond favorably to your expatiation on the merits and demerits of the two forms; if not, how otherwise?

A. I should say generally favorably.

X Int. 105. That is to say, your customers would generally acquiesce and purchase either one of the said forms which you would recommend or expatiate the most upon; is that so?

A. Yes, that is so.

X Int. 106. Then, as a matter of fact, your customers would depend almost entirely upon your representations made concerning either of the forms, rather than upon their own judgment in purchasing?

A. Both the Hall and Knapp forms are in such general use
359 that customers come prepared to purchase more than formerly, and they require less explanation in order to decide on purchasing.

X Int. 107. The answer is objected to as irresponsive, and question repeated.

A. Some would, others would not.

X Int. 108. What explanation would the others referred to in your last answer give you for not following your representation in the purchase of the form?

A. Many came prepared, with their minds made up, calling for this or that form without giving any reason, the presumption being that they had seen such a form in operation. Some would profess ignorance and require a long explanation.

X Int. 109. When a customer was in want of a form for domestic uses, as you have termed it, what did you recommend?

A. The one most nearly approximating their wants.

X Int. 110. How did their wants vary respecting such? Explain as fully as you can.

A. In this city, many ladies boarding have very little space to spare, in which case the Hall form seemed to meet their wants, and for convenience when traveling, many taking them to watering places. For dressmakers, the Knapp form was usually thought best adapted to their wants, and so for some families. For ladies' home use we could give a more satisfactory shape, though more cumbersome when not in use, by the use of our non-adjustable wire form previously alluded to.

X Int. 111. In referring to domestic purposes and domestic uses as used by you in some of your previous answers, do you mean family purposes and family uses?

A. I mean any use in contradistinction to dressmaking.

X Int. 112. Then, if I understand you correctly, it is not so much the details and parts contained in the several forms that enables the salesman to dispose of one kind more readily than another, as it is gracefulness of form and firmness of parts in some, and capabilities of another for compact and close folding together; am I correct?

A. Measurably so.

X Int. 113. What do you mean by the words "measurably so"—that it is so, or not?

360 A. I mean that with some a compact form seems indispensable, and no other will answer.

X Int. 114. Then, in view of your two last answers, the proposition contained in the X Int. 112 is true, is it not?

A. I do not know how to be more explicit.

X Int. 115. Is the proposition contained in X Int. 112 a fact or not?

A. In some cases it is so, in others it is not.

X Int. 116. Mention some of the cases where it is not the fact.

A. The wants of customers, mostly ladies, are very various. We try to ascertain their wishes, and make such a form for them as their needs require, explaining the parts if they desire. The explanation of the details of the parts facilitates the sale.

X Int. 117. Have you made the best answers that you are capable of giving to X Int. 112?

(Master, will you be kind enough to read that once?)

(Master reads X Int. 112.)

A. I have given the most accurate answer I can think of now.

X Int. 118. Please explain your meaning of the word details in your answer to the X Int. 116.

A. The moving parts of the form, the facilities of operation and general construction and ease of transportation.

X Int. 119. The facilities of operation referred to in your last answer, vary somewhat, do they not in the forms referred to sold by you?

A. They do.

X Int. 120. Which mode of operation or adjustment of the form referred to, appears to be the most acceptable to your customers?

A. I think the Hall.

X Int. 121. But you are not positive?

A. There is more demand for the Hall than any other.

X Int. 122. Because of the readiness by which it may be adjusted?

A. As I said before in a previous interrogatory.

361 X Int. 123. (Answer objected to and question repeated.)

A. Decidedly so.

X Int. 124. And that readiness of adjustment referred to consists of and is accomplished by the set collar with thumb-screw. Is not such the fact?

A. One portion.

X Int. 125. How about the other portion?

A. In the wood-post skirt form the feet have a peculiar facility of adjustment that is one feature, the dimension tapes marked in inches and fractions of an inch. These are the principal details.

X Int. 126. Name others, not "the principal details."

A. Facilities for various altitudes and ease of portability.

X Int. 127. Have you named all the features called for in my last previous question?

A. It has also facilities for expansion of the waist and hips. That is all that occurs to me.

X Int. 128. Do you wish the court to understand that the sale of the Hall forms of the complainant is due entirely to the ease by which it can be adjusted by its set collars, compactness in folding, dimension tapes marked in inches, the facilities for various altitudes and ease of portability, regardless of any other specific means employed?

A. I should say almost entirely.

X Int. 129. And you know of no other reason?

A. None occurs to me.

X Int. 130. When did you see Mr. Knapp, *which* you say is the inventor and patentee of the Knapp form, and have conversation with him concerning the suit in which you were defendant or any suit in which he was defendant?

A. I do not remember definitely. I usually saw the other partner, Hague, who frequently called on me.

X Int. 131. When you met Mr. Knapp what did he say to you and you to him concerning your suit?

A. I do not remember meeting him personally about the suit.

X Int. 132. What did Mr. Hague say to you and you to him in regard to the suit referred to?

A. The substance of it was that Hague would defend it; that the firm of Knapp & Hague would defend it.

362 X Int. 133. How many interviews did you have with Hague respecting that suit?

A. I think, three or four.

X Int. 134. When last?

A. I can't give the date I last saw Mr. Knapp.

X Int. 135. When did you last see Mr. Knapp?

A. In July.

X Int. 136. What year?

A. 1888.

X Int. 137. Have you had any conversation with Mr. Hague during the present year?

A. I have.

X Int. 138. When?

A. It was previous to the last interview with Mr. Knapp.

X Int. 139. About what length of time before?

A. I think it might have been a month.

X Int. 140. Can you recollect so as to be able to state the conversation had with you?

A. I cannot, bearing on any particular point. It being well understood between both of us that the suit was not mine. The conversation was on general matters.

X Int. 141. Did you not say to both Mr. Knapp and Mr. Hague that you would be glad to continue the sale of their forms?

A. I might have said so.

X Int. 142. Did not either Mr. Knapp or Mr. Hague call upon you and ask that you petition for a reopening of your suit that a rehearing might be had?

A. I think Mr. Hague did incidentally.

X Int. 143. What response did you make to this proposition or suggestion?

(Complainant's solicitor objects to the question as not being a matter inquired of in the direct examination.)

(Question admitted and exception taken.)

A. If I remember right, I declined.

X Int. 144. Why did you decline?

363 A. Principally to avoid entanglement in lawsuits.

X Int. 145. You were already entangled, were you not, at the time that Knapp and Hague called upon you.

A. Yes, so far.

X Int. 146. Did you not tell Mr. Hague and Mr. Knapp that you preferred their forms to those known as the Hall form, made by the complainant Morss?

A. On a good many accounts I did.

(Redirect examination by Mr. PERKINS:)

R. D. Int. 147. State whether or not, at any time after you declined to sign the petition for a rehearing, you have sent any communication to the defendants or their counsel concerning any action you would take in that matter?

A. I don't remember having any petition presented to me. When the papers were served on me, they were referred to Knapp and Hague, at New York, who had promised to defend us if a suit was brought.

R. D. Int. 148. State whether or not you are willing to sign a petition to the court in the suit against you for leave to reargue the case if Knapp and Hague, should desire you to do so, or to take an appeal from the decree of the court therein?

A. I don't wish to unless obliged to.

R. D. Int. 149. I asked you in my previous question, if you were willing to do so, I ask you now whether you would do so?

(Defendants' solicitor objects to the question on the ground that it does not apply, for the reason that the time for petitioning for a rehearing has long since expired.)

(Question admitted, and exception taken.)

A. I would like time to consider.

(Recross-examination by Mr. DANE:)

R. X Int. 150. Are you willing to swear that Mr. Hague
364 did not ask you for your consent to a petition for a rehearing and a reopening of the proofs in the suit in which you and your son were defendants in the circuit court of the United States, for district of Massachusetts?

A. I think he did allude to it in conversation.

R. X Int. 151. He made such a request, did he not, plainly?

A. I don't think he made it so very definitely, as your question would imply.

R. X Int. 152. Please tell the court just what he said to you about this matter on the occasion in question?

A. I think he may have asked me if I was willing to sign a petition for a rehearing; that was the amount of it. It is not distinctly in mind.

R. X Int. 153. But you remember that you objected to his propotion?

A. That is my recollection.

S. N. UFFORD.

Subscribed and sworn to before me this 4th day of August, A. D. 1888.

E. E. MARVIN, *Committee.*

(Mr. EVERETT MORSS recalled:)

Int. 1. Will you please look at your answers to X Ints. 107, 108, 109, 110 and 111, heretofore given, and state whether you desire to make any change in either of them, and if so, what?

A. The answer to X Int. 111 should be: We paid 23 cents each labor on all skirts made under contract with Mr. Vogler, until July 1, 1888. Since that time we pay 23 cents for the first thousand made in any week, and 20 cents for the excess. I understood by the words "period of time covered by this accounting," used in X Int. 110, to mean from Nov. 16, 1886, until April 30, 1888, and did not know that the present time was included.

365 Int. 2. Do you wish to make any change in any other answer in the testimony given by you in this case?

A. In the answer to R. D. Int. 223 the record gives the number of wood-post skirts at 7,076. This should read 17,076, this being the number of wood-post skirts made during the year 1887, part of which were sold, and part remaining in stock at the end of the year, the same as with the forms like Exhibit Plaintiff's Skirt, and like Exhibit Plaintiff's Bust, given in my answer to R. D. Int. 223.

Int. 3. Will you produce the casting which bore the dates of the patents, and which was used upon the wood-post skirt form during the period of the accounting?

A. I here produce a casting such as we used for a long time on the wood-post skirts. This casting carried the patent dates for the wood-post form so long as it was used. As soon as we dropped this casting, we put the patent marks on the wood standards, printing them on with a rubber stamp.

Int. 4. About when did you abandon the use of this style of casting and adopt the method of marking the posts with a stencil?

A. I don't remember just when the change was made, but I think it was during the winter of 1886 and 1887.

Int. 5. State whether or not the stencil referred to bore all the dates which appear upon the casting just produced by you?

A. Yes.

(Plaintiff's counsel offers in evidence the casting just produced by the witness, which is marked Complainant's Exhibit Casting.)

Int. 6. During the period of the accounting, what were the business relations between the complainant and Ruel R. Appleton, a witness in this case?

A. Mr. Appleton is and has been our independent agent; that is to say, we have trusted him to sell the forms, excepting in New England, and we have worked together in many ways, though Mr. Appleton buys the goods of us outright and sells them direct to his customers.

Int. 7. How does the complainant deal with E. F. Bowen, a witness in this case?

366 A. In much the same way as with Mr. Appleton, but for a different territory, and to a very much less extent.

Int. 8. Do you know what is the business of Henry Bristow, whose

name appears upon the list of customers in the Exhibit Defendants' Statement?

A. Yes. He is the agent for the Domestic Sewing Machine Company, in Brooklyn, N. Y.

Int. 9. What have been the facilities of the complainant for supplying the demand for dress forms complete, and skirt forms, during the period of this accounting?

A. Their facilities have always been more than sufficient to supply the demand.

(Cross-examined by Mr. DANE:)

X Int. 10. About how many forms in excess of 1,000 made per week have you paid 20 cents each for constructing?

A. 300 per week.

X Int. 11. For how many weeks?

A. Five.

X Int. 12. Then, if I understand you correctly, you have paid 20 cents each for the construction of 1,500 forms since July 1, 1888?

A. Yes.

X Int. 13. And if they do not make more than 1,000 per week, you are to pay 23 cents each?

A. Yes.

X Int. 14. When was the casting of the kind to which you have referred, and which has been put in evidence to-day, first applied to complainant's skirt forms?

A. Some time before January 1, 1885; I don't remember just when.

X Int. 15. And such have been applied to all such skirt forms made by the complainant, or Mr. Hall, except such as were provided with marks stenciled upon the wood posts?

A. Since its first application, yes.

X Int. 16. You stated that Mr. Bristow is the agent for the Domestic Sewing Machine Company, how do you know it?

A. Because he runs a big store on Fulton street, Brooklyn,
367 and makes his principal business apparently in selling Domestic sewing machines.

X Int. 17. Then it is simply guess-work on your part, based on the statements contained in your last answer?

A. Not at all; I base my opinion on my observation of his store.

X Int. 18. And this fact, coupled with the fact that he sells Domestic sewing machines largely, enables you to state knowingly that he is agent for the Domestic Sewing Machine Company?

A. Yes. This evidence gives me knowledge of the fact in itself, although I have the corroborative evidence of a large number of people that have told me so.

HARTFORD, *Aug.* 22, 1888.

Defendants' accounting continued.

Present, Mr. Tucker, for the complainant; Mr. Dane, for defendants.

Complainants offer in evidence certified copies of the bill, answer, rescript and decree in the case in the U. S. circuit court for district of Massachusetts, entitled Charles A. Morss *vs.* Domestic Sewing Machine Company, which are marked respectively Complainant's Exhibit Bill, in Morss *vs.* Domestic; Answer, in Morss *vs.* Domestic; Rescript, in Morss *vs.* Domestic; and Decree, in Morss *vs.* Domestic.

(Defendants' counsel objects to the admission of the bill, answer and rescript referred to, as incompetent and inadmissible on these investigations before the master and committee. He also objects to the admission of the so-called decree offered in connection with the bill, answer and rescript for the reasons stated in objections made to them, and for the further reason that the so-called decree does not
368 appear to be a decree by the court, and that the same does not contain either the signature of or a copy of a signature of Judge Colt, or any other judge of and for the first circuit; and furthermore, defendants' counsel have not been notified of any motion for a settlement of any decree in the case referred to.)

(Mr. Perkins, counsel for complainant, states that on the 8th day of August, current, he mailed to Mr. Dane, defendants' counsel, a copy of the decree entered in the case of Morss *vs.* The Domestic Sewing Machine Co., above referred to, together with a letter asking him if he had any objection to the form of the decree. They were addressed to Mr. Dane at his office, 261 Broadway, New York. No response was received from Mr. Dane before the entry of the decree, although letters relating to other matters were received from Mr. Dane's office by Mr. Perkins during that time.)

(Mr. Dane states that the letter and decree referred to by Mr. Perkins did not come to his hands or to his notice until Monday of this week and subsequent to the filing of the decree.)

(Exhibits admitted, subject to further objection if it is not shown that the exhibits here present are identical with the structures in question in the suit referred to, and defendants' counsel excepts.)

It is stipulated that these exhibits may be used and referred to in these references and accounting, without printing, subject to the objections previously made.

JOHN E. EARLE, a witness produced by defendants, sworn and examined by Mr. DANE.

Int. 1. What is your name, age, residence and occupation?

A. My name is John E. Earle; age 57 years; residence, New Haven; occupation, solicitor of patents.

Int. 2. What experience have you had that enables you to testify as an expert in causes wherein mechanical contrivances are the subject of litigation?

369 A. For more than 35 years I have been engaged in soliciting patents, prior to 1862 in connection with mechanical

drawing. Since 1862, my time has been devoted almost exclusively to securing patents and business in connection therewith. Since 1862, I have personally prepared more than 2,000 applications for letters patent, which included a very large variety of mechanical inventions. During the last 18 years I have been called upon to testify in a very large number of patent causes in the U. S. court.

I have many times examined the state of the art to ascertain the scope and validity of letters patent of the novelty of inventions.

I have acted as one of several boards of arbitration, and also as referee to ascertain the novelty, scope and validity and value of a large number of letters patent.

Int. 3. Did you testify as an expert in the suit of Charles A. Morss *v.* Ufford and another, in the district of Massachusetts, in which the Hall patent of October 12, 1880, formed the base of the suit?

A. I did.

Int. 4. In testifying in the suit against Ufford, did you have before you at the time a form said to be in accordance with the Hall patent?

A. No, sir, I did not; I never saw a Hall form, to my knowledge, till after the decision in the case referred to in the last preceding question.

Int. 5. What of the defendants' dress forms, if any, did you have before you at the time you testified in the Ufford suit? Please point out from the several exhibits here before the master.

A. There were two forms before me at that time, one a skirt form, the other a full figure, which I understood to have been made by the defendants, and which two exhibits were like the two exhibits here, which are marked Complainant's Exhibit Defendants' Complete Dress Form, and the other Complainant's Exhibit Defendants' Skirt Form.

Int. 6. At the time you testified in the Ufford case, had you seen or examined either of the three dress forms marked respectively, Defendants' Form A, Defendants' Form B, Defendants' Form C?

370 A. I had not.

Int. 7. Have you read the testimony of complainant's expert, Mr. James Shepard, given before the master and committee in these cases bearing upon the several exhibits to which your attention has been directed?

A. I have.

Int. 8. Mr. Shepard, in his testimony, states that he considers defendants' forms A, B, and C, respectively, the same substantially as the exhibit introduced in the Ufford suit. Please state whether you find such statements to be correct, and if nay, why? State fully any reasons that you may have for a different opinion.

A. I do not agree with him; but on the contrary I find in the Exhibits A, B, and C, a mechanism for adjusting the hip portion of the form essentially different from the mechanism for adjusting the hip portion of the other two. In the two exhibits in the Ufford case, the mechanism for adjusting the hip portion of the form are

alike. That mechanism consists of a series of braces, hinged by their inner end to a collar upon a central shaft, held so as to prevent movement of the collar either up or down. The braces extend obliquely outward and downward, and are hinged by their outer end to the ribs or waist-band segments, to which the ribs are attached. Combined with these downwardly inclined braces is a second series of similar braces hinged by their outer end to the same points on their ribs as the first series of braces.

This second series of braces extend from their point of connection with the ribs obliquely downward and inward, and are hinged by their inner end to a collar on the central shaft. The collar to which this second series of braces are hinged is internally screw-threaded, forming a nut which is adapted to work upon a correspondingly screw-threaded portion of the central shaft.

The central shaft extends above the form and terminates in a head by which the shaft can be conveniently rotated.

As the upper collar which supports the upper series of braces is stationary, it follows that the rotation of the shaft will cause the lower collar to travel on the screw-threaded portion of the shaft up or down, according to the rotation of the shaft, and so as to draw the said lower or screw-threaded collar towards the stationary collar, or force the screw-threaded collar from the stationary collar, as the case may be. Such movement of the screw threaded collar carries with it the lower end of the lower series of upwardly inclined braces, and as the upper collar cannot rise or fall, the movement of the lower collar toward the upper collar forces the two series of braces into a less oblique position, thereby causing the jointed ends of the oppositely inclined braces to be thrown outward, and accordingly to expand the hip portion of the form. On the other hand, if the screw-threaded collar be forced downward by the rotation of the shaft, the jointed ends of the oppositely inclined braces will be drawn downward and contract the waist portion of the form.

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Referring now to the Exhibit A, I find the hip portion of the form is adjusted by means of a single series of braces connected to a screw collar on the shaft and extended obliquely upward, are hinged at their outer ends to the ribs. The nut and single series of inclined braces on this Exhibit A, is substantially the same as the nut, collar, and lower series of braces in the Ufford form; but in this Exhibit A, the upper series of downwardly inclined braces and their collar, found in the Ufford form, are absent, and not only absent, but there is nothing in Exhibit A arranged to coact with a single series of braces that, in my opinion, corresponds to or is equivalent for the second series of oppositely inclined braces and collar in the Ufford forms.

In the Exhibit A there is not found the double oppositely inclined braces, stationary collar, and an adjustable collar, with braces connected with ribs, as in the Ufford exhibit.

In Exhibit B, I find a skirt form having a collar screw-threaded on a central shaft, with a series of braces hinged thereto and ex-

tending obliquely upward and outward, or hinged on their outward ends to the ribs.

Below the adjustable collar carrying the braces, is a second collar held upon the shaft so as to prevent its movement up or down. The second collar carries a series of struts which extend obliquely upward and outward, and are hinged to the respective braces at points between the screw-threaded collar and the joint at the outer end of the braces, so that these struts each serve as a fulcrum
372 for a corresponding brace to which they are connected, and so that as the adjustable collar carrying the braces is raised or lowered, the braces operate as levers upon the said struts, and so that the outer end of the braces will be rapidly forced outward or inward accordingly, as the screw collar is raised or lowered, and thus, by turning the shaft, the hip portion of the form may be expanded or contracted.

This mechanism in Exhibit B differs essentially from that in the Ufford forms in that, that in Exhibit B there is not found the double oppositely inclined braces found in the Ufford exhibit, nor is there in Exhibit B any substantial equivalent for such oppositely inclined braces. The mechanism and the operation is different.

Exhibit C shows a series of braces with a screw collar on the shaft like Exhibit B, except the braces are inverted, that is, inclined downward and outward in Exhibit C, instead of upward and outward, as in Exhibit B.

The stationary collar for the support of the braces is above the collar of the braces, and the links are hinged to the collar and extend obliquely downward and outward, are hinged by their outer end to the braces midway of their length; that is to say, the device for adjusting the hip portion of the form is the same in Exhibit B as that of C, except that the position of the parts in Exhibit C is inverted from that of Exhibit B, and the adjusting devices for the hip portion of Exhibit C differ in their construction and arrangement from those found in the Ufford forms, as I have described, as to Exhibit B.

Int. 9. Please refer to the second claim of complainant's patent, upon which the suit in which you are testifying are based, and tell the court whether or not you find the combination of that claim in defendants' forms A, B, and C, at the same time give such reasons for your opinions as will tend to make yourself clearly understood?

A. I do not find the combination recited in the said second claim in either of the three exhibits referred to in the question.

As I understand the said second claim, the combination therein described as such invention is a central standard or shaft, ribs arranged about the said shaft, two series of braces oppositely inclined; the one series of braces hinged to a block arranged to slide on the central shaft and extending from the second block obliquely
373 upward, are hinged by their outer ends to the ribs; the second series are hinged to a collar, or block above the collar, of the first series, and extends from this collar obliquely downward (that is), inclined in an opposite direction to the first series of braces, and are hinged by their outer ends to their respective ribs with a

rest on the standard below the lower collar, and a like rest on the standard above the upper collar, the two rests serving to prevent the collars being forced from each other, but these rests have no power to prevent the collars from approaching each other. The movement of the collars towards each other will cause the two series of oppositely inclined braces to approach each other, and consequently force their joined ends outward and expand the form.

If there were no provision other than I have thus far described the upper collar would slide down the shaft, by gravity simply, until it rested on the other collar below. To prevent such dropping of the upper collar, the patent provides for a band around outside the ribs, which serve to hold the ribs inward against the braces, the two rests serving as a resistance against the pull of the band; that is to say, any contraction of the band will tend to force the collars from each other, and such tendency will serve to contract the form, were it not for the rests on the shaft. Were it not, therefore, for the presence of such band, the rests would not be supported, nor could the form be expanded or contracted.

The contraction of the form of the patent is produced by adjusting one or the other of the rests, so as to allow the collars to separate or move from each other and then contracting the band around the form accordingly.

Without such band to act in opposition to the double-inclined braces and rests on the shaft, the form would be wholly inoperative and useless.

To illustrate, take Exhibit Plaintiff's Skirt, in which the rests are fixed to the standard, a band drawn around the upper end of the ribs, as in the patent; the collars carrying the braces are held against their respective rests, so that further contraction of the hip portion of the form is prevented.

To expand the form the band is lengthened, which relieves the braces from the force of the band, so that the upper collar now drops from its rest and by its own gravity, but in this position
374 the form is easily collapsible, as will be seen by pressing on the outsides inward. To prevent this collapsing, the upper rest must be brought down on the upper collar or the lower rest be raised until both collars are brought to a bearing on their respective rests. If, however the band be disconnected or removed, the result will be a general collapse of the form, hence I say, that as without the band the combination specifically mentioned in the claim is inoperative, and because that it is so inoperative, the band is necessarily included under the expression "substantially &c.," as an essential element of that claim.

In the three Exhibits A, B and C, the adjusting devices consisting of the braces and their connections are the sole means for adjusting the waist portion of the form. By no possibility in either of the three exhibits can a band around the form perform any office in combination with the braces.

By no possibility can the collapsing occur, such as I have described and shown in connection with plaintiff's skirt.

In neither of the Exhibits A, B and C, are there the double-in-

clined braces shown and described in the patent in suit and specifically made elements of the second claim. Nor is there anything corresponding to the means for adjusting or supporting the braces in the Hall patent.

The said three exhibits, not only lack one element, to wit, the band, essential to the combination of the said second claim, but the construction and operation of the adjusting devices is essentially different, and in my opinion the adjusting devices of the three exhibits cannot be considered in any sense equivalents of the devices making the combination of the said second claim.

I should state that in Exhibit Plaintiff's Skirt, as I found it, there was an extra stop or rest applied to the shaft between the collars and also a wire, bent so as to stand betwe-n the collars and so as to prevent the two collars from coming together and making an entire collapse, but as this collar and wire are not shown in the patent, nor is there anything in the patent that suggests the employment of such devices in the patent in suit, I removed such stop and wire before I made such illustration.

Int. 10. Did you observe the fact of the necessity of the band in the combination of the elements of the second claim of the plaintiff's patent, when you testified in the Ufford suit to which you have referred?

375 A. No, sir. At that time, as I have before stated, I had never seen a form made in accordance with the patent, neither did I see such a form until after the decision by his honor Judge Colt.

The necessity of the band did not appear to me in the examination of the patent, but immediately on seeing the form it did appear to me very clearly, that the band should be included as a necessary element of the combination of the second claim, and that the claim was for an inoperative combination unless the band be included, and the Hall form, (that is Exhibit Plaintiff's Skirt) was a useless and inoperative device except the band be combined therewith.

Int. 11. Did the defendants' form in the Ufford suit contain the band referred to in your last answer, and an equivalent therefor?

A. In my opinion it did not.

Int. 12. Do you mean to say that the combination of the elements which connect the collars and ribs in exhibits in defendants' forms B and C, are such as to make the use of the flexible bands or tapes unnecessary?

A. That is just what I intended to say, and what I think I have said. Regarding Exhibit C, the provisions that it makes for adjusting the waist band, by means of a strap, this has nothing to do with the operation of the braces. The braces and connections in both exhibits operate the same whether a strap or band be employed or not.

Int. 13. If the tape or band referred to does not constitute an essential element in connection with the ribs, braces and link, for what purpose is such band or tape intended?

A. As I understand it, the tape or band is employed as a conven-

ient measure for the points where it is applied, and is graduated accordingly; that is to say, a circumference of waist and a circumference of hip being determined, the bands are set to the required measurement and the form expanded to fill the bands.

Int. 14. Should the tape or band called for by the complainant's patent be omitted from the element specified in the second claim of the patent, in what respect would it differ from the combinations described in letters patent to Shaw, Kirkham & Robbins, which I now hand you?

376 A. In the Shaw patent, which is for an umbrella, I find a central shaft having a series of ribs for spreading the umbrella cover, and in which a slide is arranged upon a shaft having ribs hinged thereto, extending obliquely upward and outward, are hinged by their outer ends to their respective ribs, combined with a second collar on the shaft above the first collars, and a like series of braces hinged to the said second collar and extending obliquely downward and outward, are hinged by their outer ends at substantially the same point where the lower braces are hinged. Above the upper collar is a stop or rest, and below the lower collar is a stop or rest, which limits the movement of the said two collars, to prevent their being forced apart when the ribs are distended. This Shaw patent, therefore, shows a standard and ribs, two series of oppositely inclined braces, that is, double braces, sliding blocks or collars on the standard carrying said braces, and stops or rests on the standard for the respective collars. If, therefore, the second claim of the patent is to be construed for the elements therein particularly referred to, and without including the band, which is necessary to make it an operative combination, then, in my opinion, that combination is found in the said Shaw patent. I take into consideration the particular construction of ribs, which adapt the device for use as an umbrella, but this I do not understand to be material, so far as the said combination is concerned.

In the Robbins patent, which is also for an umbrella, there is the same combination of standard ribs, double or oppositely inclined braces, collars and rests therefor, as in the last-mentioned patent, except that the upper collar or block is made stationary on the standard, and that the braces of one series cross the braces of the other series, and are attached at points distant from each other. If, therefore, it is essential to the second claim of the Hall patent that both of the blocks or collars h^1 h^2 shall slide upon the standard, then such sliding blocks are not found in the Robbins patent; but if it is immaterial whether the said blocks both slide or not, and that the band is not essential to the combination, the said Robbins patent exhibits the same combination of elements as that recited in the second claim, the difference in the method of connecting the braces to the ribs not being essential, as I understand it.

377 The Kirkham patent, also for an umbrella, shows and describes a standard, a stationary collar near the upper end, braces hinged thereto extending obliquely downward, combined with a sliding collar or block on the standard, below a series of braces hinged to said block and extending obliquely upward are

hinged to the upper series of braces, the two series of braces forming double or oppositely inclined braces, the braces connected to ribs, and so that by raising or lowering the lower sliding collar or block the ribs will be expanded or contracted accordingly, with a stop or rest on the standard to hold the lower collar or sliding block. Consequently, I find in the Kirkham patent a combination of a standard, ribs, double braces, two blocks—one sliding and the other stationary, and a rest for the sliding block, substantially like the patent in suit, except that in the Kirkham patent the upper collar is stationary, and consequently has no rest provided on the standard for it. Consequently, if the Hall patent is to be construed so broadly that making one of the blocks stationary, which the claim states is to slide, and the band is not material, then, in my opinion, the Kirkham patent exhibits the same combination of elements as that recited in the second claim.

Int. 15. Please refer to the Exhibit Defendants' Form C, and to Exhibit Complainant's Skirt, and state which of the two forms contain the combination of braces and ribs more nearly like the braces in connecting parts shown in the Kirkham patent?

A. Exhibit Plaintiff's Skirt does so, it differing only from the combination of the Kirkham patent in that the upper collar in the plaintiff's skirt is adjustable on the standard, whereas in the Kirkham the upper collar is made fast to the standard. In both there is the same central standard, ribs, same double series of braces, oppositely inclined, in both, two collars, to which the double or oppositely inclined braces are hinged alike; but in the Kirkham patent the upper collar is stationary and the lower collar movable, with a rest on the lower collar to support it; whereas, in the plaintiff's skirt, both collars are adjustable on the standard, and each collar has its own independent rest.

Comparing Exhibit C to the Kirkham patent, there is the same standard, ribs, and two collars on the standard, the upper collar
378 stationary and the lower collar movable. The single series of braces in this Exhibit C extend from the movable collar downward instead of upward, as in the Kirkham patent, and the connection from the upper collar to the braces also extend downward and are connected to the braces. There are not, therefore, in Exhibit C, the oppositely inclined braces of the Kirkham patent. Because of these differences, in my opinion, complainant's skirt is more nearly like the Kirkham patent than is Exhibit C, although, as before stated, the Kirkham patent does not show both blocks as sliding, as in the second claim, and consequently has not the two rests h^1 h^2. Unless the claim is to be construed so broad as to include one of the blocks stationary on the standard, then the Kirkham patent shows the entire combination of elements substantially as shown in the Hall patent, and particularly recited in the second claim; provided, always, that the second claim is to be understood as not including the band as an element necessary thereto.

In considering the Kirkham patent, I have said nothing in regard to the peculiar hinging devices between the ribs and braces, as I do not understand that to be material.

Adjourned to August 22d, 10.00 a. m.

HARTFORD, *August* 22*d*, 1888.

Accounting continued.
Parties present as heretofore.

Examination of JOHN E. EARLE, witness, continued:

Int. 16. In your last answer you compared the complainant's skirt with the Kirkham patent and Exhibit C, to show which of the two forms, complainant's skirt or Exhibit C, was most nearly like the device of the Kirkham patent, will you please to state the extent of difference which you find between the said Exhibit C, complainant's skirt and the Kirkham patent, so far as the devices for contracting and expanding the ribs are concerned?

A. In making the comparisons in the last answer, I only considered in defendants' forms the ribs, braces, and the two
379 rests which support the braces. These elements in complainant's skirt do not constitute the adjusting devices, because they have no capacity to do anything beyond the expansion of the form; that is to say, they have not the capacity to contract the form, nor have these devices the capacity to expand the form as a form without the presence of a band which holds the ribs against the braces. To illustrate: In the Exhibit Plaintiff's Skirt, with the rests set and the band brought to a bearing, the movement of either rest which support the braces will not effect adjustment. This I illustrate, by first dropping the lower rest upon the hip adjustment, when it will be found that the form being free, the whole form will drop without either expansion or contraction of the hip portion. Now I return to the lower rest until the upper collar comes against the upper rest as before. Then I loosen the upper rest and raise it upon the shaft, which produces no effect whatever upon the form. But if the lower rest be stationary, I depress the upper rest to bring the braces nearer together, the form will be expanded at the hips, the band serving to hold the ribs against the expanding force of the braces. Now if I loosen the upper rest, the reactive force of the band will cause the braces to separate and the form to contract at the hips.

In all these adjustments that I have made, had not the band been present the adjustment would have been impossible, and the form would have collapsed, as I have shown in my previous answer.

The band, therefore, I have said is not only essential to the adjustment of the complainant's skirt, but without it the form is useless.

In the Kirkham patent and in Exhibit C one of the collars is held stationary upon the standard, so that it cannot move either up or down; the other collar being adjustable upon the standard, so that in both the Kirkham patent and Exhibit C the adjustment is made solely by the collar which is movable on the standard, that is, both in expanding and contracting. There is no band or anything surrounding the ribs which in any sense operates to aid the movable collar and its connection, or anything which corresponds to the band necessary to the operation of the form Exhibit Plaintiff's Skirt.

I said in my last answer that in my opinion the ribs, collars
380 brace- and their rests, of plaintiff's skirts, were more nearly like the Kirkham patent than was the hip-adjusting devices of Exhibit C. This I have said simply as a matter of opinion and comparatively.

The extent of difference between the three structures referred to is great.

The points of difference which I have pointed out as existing between the plaintiff's skirt and the Kirkham patent are not the differences which exist between Exhibit C and the Kirkham patent.

The Kirkham patent stands between the two exhibits, and the extent of difference of Exhibit C and plaintiff's skirt is the difference between plaintiff's skirt and Kirkham's patent, plus the difference between Exhibit C and the Kirkham patent. Considering the band of plaintiff's skirt, as it necessarily must be as an element of the adjusting devices, and without which the other elements of the adjusting device are useless, I should hesitate to say which of the two exhibits more nearly resembled the Kirkham patent, but the difference and extent of difference in the three I think I have fully defined.

Int. 17. How about the Shaw patent in comparison with Exhibit Defendants' Skirt and Defendants' Forms A, B, and C, and complainant's skirt, as regards their similarity of operation and results?

A. The arrangement of the double oppositely inclined braces, two collars on the standard carrying the braces, and the ribs on to the outer end of the braces, they are the same in defendants' skirt, in plaintiff's skirt and in the Shaw patent, but in the Shaw patent both collars are movable on the standard, as are both collars in the plaintiff's skirt; whereas, in the defendants' skirt the upper collar is stationary, while the lower collar is adjustable or movable. Defendants' skirt, therefore, differs from the Shaw patent as it differs from complainant's skirt.

This comparison I make without reference to the band of plaintiff's skirt essential to the operation of the braces in the expansion and contraction of the ribs and for which, in my opinion, there is no equivalent in defendants' skirt.

Referring now to defendants' forms A, B, C, so far as the
381 adjusting devices of the hip portion is concerned, there is not, as I have stated, the oppositely inclined braces found in the Shaw patent, in defendants' skirt and in plaintiff's skirt.

The adjustment of Exhibits A, B, and C is made solely by the movement of one collar and without the interposition of a band around the ribs, or any equivalent therefor, which is necessary to the adjustment of plaintiff's skirt.

Int. 18. State whether or not the parts specified in the combination of the second claim of the Hall patent so coact as to form an operative apparatus for any practical purpose.

A. Considering only the elements named in the combination of the claim, and excluding the band, these elements can do nothing, and are useless as a combination.

Int. 19. The specification of the Hall patent of the complainant

states that the invention relates to improvement in dress forms by which every part of the dress form is rendered adjustable, etc. Explain what you understand by the expression.

A. I understand that not only is the form adjustable bodily, but that its individual members, that is, the ribs, are adjustable, independent of each other, so that the form has an adjustment independent of the braces. This is produced by connecting the ribs with the braces, so that the ribs may be thrown outward or inward independent of each other. This adjustment is illustrated in the plaintiff's skirt in the lower braces, which are each made extensible to give an independent adjustment to each particular rib.

The waist portion is also made adjustable in a similar manner.

Int. 20. Do the facts stated in your last answer apply to any one of defendants' forms in evidence, to which your attention has been called during your examination in these cases?

A. No, sir; in all defendants' forms there is not adjustment of individual ribs. Any movement of one rib possible in defendants' forms is necessarily communicated to all the other ribs.

Int. 21. Please look at the Wilson patent in evidence and state whether or not you find in it a form consisting of ribs that are capable of independent adjustment.

A. I do. In this patent I find a form consisting of waist segments supported upon a standard, and which are capable of expansion to increase or diminish the circumference of waist or length of waist band.

382 On a central standard a collar is arranged to slide up and down thereon, and surrounding the standard are several ribs hung to the waist portion so as to expand or contract therewith, and from the collar on the standard hinged braces extend obliquely downward and outward, and are hung by their outer ends to their respective braces, so that as the collar is raised or lowered the lower end of the braces will be correspondingly drawn inward or outward.

The braces are connected to the individual ribs, so that the ribs are adjustable individually to contract or expand according to the adjustment of their connection with their particular brace.

This patent, therefore, exhibits a skirt form in which the ribs are adjustable bodily, and in which there is also an adjustment of the parts.

Int. 22. State whether you find in any of the defendants' forms means by which every part of the form is rendered adjustable, so that it may be applied to a dress of any size or style and fill it out perfectly, unless the skirt is made of corresponding form?

A. I understand the question to refer to adjustment of individual parts of the form, such as have been referred to in the last two questions and answers. Neither of defendants' forms contain such adjustment of individual parts. In defendants' forms there is only a general circumferential adjustment alike in all parts.

(Cross-examined by Mr. PERKINS:)

X Int. 23. In what suits, upon the patent in the suit herein, have you testified in behalf of the defendants?

A. I believe in two suits. I cannot give the titles.

X Int. 24. In what suits or proceedings involving the patent referred to have you given an affidavit on behalf of the defendants?

A. I have made several affidavits on the part of the defendants, but do not know in what proceedings they were used, or if ever used.

X Int. 25. Did you not give an affidavit which you under-
383 stood was designed to be used upon a motion for a preliminary injunction in a suit involving this patent?

(Defendants object to the question as immaterial, nothing justifying the question contained in the direct examination. Question admitted and exception taken.)

A. I may have done so, if there has been such a motion in which these defendants were parties; I presume I did.

X Int. 26. Do you remember that in any such affidavit you compared devices similar to the defendants' forms B and C with the combination of the second claim of the patent in suit herein.

A. I believe I have made such comparison in some affidavit I have made; but do not recollect what case it was in or what it was for.

X Int. 27. Don't you remember executing a very voluminous affidavit in the latter part of May last, which contained a very full discussion of the scope of the patent in suit, and the mechanism of the forms B and C, and discussing also the operative character of the second claim of the patent in suit?

A. I made an affidavit some time in which the subjects referred to were discussed, but I cannot say when I made it. I have several times since the decision by Judge Colt made affidavit on the inoperativeness of the said second claim, but I cannot tell when it was done or for what purpose it was required.

In making the affidavit, in which I refer to some of the later forms made by the defendant, and which I suppose were like Exhibits B and C, I now recall that it was for use in Boston, as I remember working late in the evening and taking it to the post office, addressed to Mr. Dane in Boston. The forms upon which I made my affidavit were brought to me by one of the Mr. Knapps and said by him to be like certain forms in Boston, and which Mr. D. had advised me would be like these forms, and to make my affidavit accordingly, and I did so; but, as I have before said, I do not now recall the purpose for which the affidavit was made or the time. I did not see the forms in Boston.

X Int. 28. You do know, do you not, that you made an
384 affidavit in a case which was pending in Boston, wherein certain exhibits were introduced, which you were informed were like certain other exhibits referred to in your affidavit?

A. I don't know where the suit was pending. I made my affidavit on forms said to be like forms in some controversy in which the Knapps were interested. I may have known the title at the time, but do not recall it now.

X Int. 29. Did you know that the exhibits or were you informed that they were in Boston?

A. I cannot say; if they were so, I was probably so informed. So far as locality is concerned, I only know that I mailed the affidavit to Mr. Dane, and I particularly recollect this because I received a telegram from Mr. Dane asking me to deliver it to him on the evening train as he was passing through New Haven, and mailed it later, giving it myself to the clerk at the post office to make certain that it should reach Mr. Dane the next morning.

X Int. 29. Did you make any statements in that affidavit about the operative or inoperative character about the combination of the second claim of the patent in suit?

A. I don't recollect whether I did or not. If the affidavit was made before I first saw the Hall form, as I have mentioned, I certainly did not; if it was made after, I probably did, if the occasion required such a discussion of the claim.

X Int. 30. Have you not expressed the opinion that the combination of the second claim of the patent in suit was inoperative?

(Defendants' solicitor objects to the question, for the present record of his testimony clearly discloses the fact that the witness has explained in detail that the combination of elements specified in the second claim are entirely inoperative and useless and therefore inadmissible.)

(Question admitted and exception taken.)

A. I think I have distinctly said that in my opinion the combination of elements particularly recited in that claim can perform no useful or operative results, and I have illustrated that opinion in reference to plaintiff's skirt which now stands before me, —
385 correctly represents the skirt portion of the form described in the patent in suit, and shows clearly each and every element in the combination recited in that claim, and that without another element not mentioned in the claim, to wit, the band, the form is inoperative and useless.

X Int. 31. Do you understand that any element or part is embraced in the combination of the second claim, other than those which are expressly enumerated?

A. I do not.

X Int. 32. Have you not testified in this hearing that the elastic band *e* by the words "substantially as described," is embraced in the combination of that claim?

A. I have said or have intended to say that without such band as an element of that claim, the combination of elements therein recited was inoperative, and that if the courts had construed that claim as an operative combination, it must necessarily include the band "substantially as described," and that is still my opinion of that claim; that is to say, to make it an operative combination it is necessary to import into the claim under the expression "substantially as described" an element not recited in the claim as an element of that combination.

WILLIAM H. KNAPP recalled.

Examined by Mr. DANE:

Int. 1. Mr. Knapp, what, if any, of the exhibits in evidence said to have been produced by you or the Union Form Co., are manufactured in accordance with letters patent granted to you?

(Complainant's solicitor objects to the question as incompetent.)
(Question admitted and exception taken.)

A. All of them.

Int. 2. Are they made under different patents granted to you?

(Same objection, question admitted and exception taken.)

386 A. Yes, sir. The figures here marked Plaintiff's Exhibit Defendants' Complete Form and Plaintiff's Exhibit Defendants' Skirt Form are made under three patents.

(Same objection, admitted and exception taken.)

Int. 3. What can you say concerning the three forms marked Defendants' Forms A, B, and C, respectively; are they made under any patent or patents granted to you?

A. Yes, sir; they are manufactured under two patents granted to me. These patents were granted to me after the patents mentioned in the previous answer.

Int. 4. Under what of the patents before you were the forms made by your concern, like Complainant's Exhibit Defendants' Complete Form and Complainant's Exhibit Defendants' Skirt Form?

(Same objection, admitted and exception taken.)

A. Patent granted W. H. Knapp, Nov. 13, 1883, numbered 288,452. Patent granted to W. H. Knapp, Nov. 11, 1884, No. 307,960, and letters patent to Wm. H. Knapp, Dec. 25, 1883, No. 290,990.

Int. 5. Point out the patents under which the three forms, marked respectively Defendants' Forms A, B, and C, are manufactured.

A. Patent granted me June 12, 1888, No. 384,531, and also letters patent granted to me Aug. 7, 1888; I do not recollect the number.

Int. 6. Are any of the three forms referred to in my last previous question made under any other patents granted to you not enumerated and specified in your last answer? and if yea, name them.

(Same objection, admitted and exception taken.)

A. Letters patent granted me Nov. 29, 1887, No. 373,989.

Int. 7. Which one of the three forms referred to are made
387 under or embody the features shown and described in letters patent, dated Nov. 29, 1887?

(Same objection, admitted and exception taken.)

A. Defendants' Form C.

Int. 8. How about forms A and B: do they embody or either of them patented features granted to you, not already specified in your previous answers, and if yea, what?

(Same objection, admitted and exception taken.)

A. They do not; no, sir.

Int. 9. What of the profits made upon the forms made by you or the Union Form Co. are due to the improvements patented by you?

(Objected to as incompetent; admitted and exception taken.)

A. All of the profits are due to the improvements.

Int. 10. How do you know this to be the fact?

(Same objection, admitted and exception taken.)

A. That, in my going about among the trade people have asked me, or rather the trade I sought have signified their want for the figures that adjusted from one point, they not knowing whom it was made by or the price of it, but wanted it simply because it adjusted so easily and readily, as they expressed it, from the top.

Int. 11. Name such parties as you can now recall, if any, that have stated to you that they wanted the Knapp forms made by your concern solely because of the improvements therein made and patented by you.

(Same objection, admitted and exception taken.)

388 A. The Domestic Sewing Machine Company's agents at Boston, New York, and Henry Bristow of Brooklyn, Edward Smith of New Haven, and many more.

(Cross-examined by Mr. PERKINS:)

X Int. 12. Have you named the principal improvements which the trade call for and which, in your opinion, caused the sale of your forms?

A. I have; yes, sir.

X Int. 13. When, with reference to the date of the decree in this case, April, 1888, did you make the invention shown in the Exhibit Defendants' Form A?

(Defendants object to the question as calling for matters wholly irrelevant on this accounting. Question admitted and exception taken.)

A. I cannot tell the exact day or month, as I have for the past five years been making new movements and perfections, and as this is only one of a great number of devices that I possess, and just when this particular one was gotten up, it is impossible for me to say.

X Int. 14. Don't you know whether it was before or since the decree?

A. I have given the best answer that I can in the previous answer.

X Int. 15. Did you have any doubt up to the time of the decree, in the case that you had a right to use double braces at or near the waist band of the form, arranged in some one of the ways shown in the exhibits here?

(Defendants' solicitor objects to the question as entirely irrelevant and wholly inadmissible on this accounting. Question admitted, and exception taken.)

A. No, sir; I did not have any doubt.

X Int. 16. Did you at any time before the decree dispense with the double braces at or near the waist band in any dress form made by you?

389 (Defendants' solicitor objects to the question as entirely immaterial, irrelevant and inadmissible on this accounting, and that this is not the proper time to start a fishing expedition for matters that are improper at this examination. Question admitted and exception taken.)

A. I have made dress forms of other mechanical contrivances than braces.

X Int. 17. When?

A. During the last five years, just when I cannot say, experiments having been carried on in all manner of contrivances.

X Int. 18. Did any form made by you prior to the decree contain a single set of braces at or near the waist band, substantially like that shown in form A?

(Same objection, admitted and exception taken.)

A. Yes, sir; we made single-brace figures many months previous to the present year, but just how long I cannot say.

X Int. 19. Did they work successfully?

(Same objection, admitted and exception taken.)

A. They did; yes, sir.

X Int. 20. Did you ever sell any?

A. Yes, sir.

X Int. 21. Are there any in existence now that you know of?

A. Figures like Exhibit A, which I suppose the gentleman means, duplicates of them were sold, but whether there be any in existence now, of course I cannot tell.

X Int. 22. Is the figure like Exhibit A the one you have referred to — your answer to Int. 18?

A. Yes, sir.

X Int. 23. Then you are now certain that you did make form A before the decree in this case, are you not?

A. Yes, sir.

X Int. 24. What did you mean by saying a few minutes ago that you could not tell?

390 A. What I said a few minutes ago was that I could not tell the day or the month, and said nothing whatever whether it was before or after the decree.

X Int. 25. Did you understand Int. 14 to ask you at what date you made the invention contained in form A?

A. No, sir, I did not.

X Int. 26. You understood me to ask you, did you not, in Int.

14, when the invention was made, in reference to the date of the decree, and you said substantially, did you not, that you could not tell?

A. I did not understand that to be the case as I now understand the matter.

X Int. 27. Will you please to explain what you mean by your last answer.

A. I did not understand that the question referred to in my last answer had anything to do with the invention of single-brace figures.

X Int. 28. You did not expressly refer to any question in your last answer. Which question did you mean?

A. Question 16.

X Int. 29. Did you understand me in Int. 26 to have any reference to Int. 16, or the answer thereto? If so, please explain why you so understood that I referred to them?

A. I did, yes, sir.

X Int. 30. And why?

A. My two previous answers will indicate, if you will read them.

X Int. 31. Please point out the words in Int. 26, which have any reference to Int. 16.

A. I have not said that any or do not wish to infer that I understand that any words in Int. 26 refer to any in Int. 16.

X Int. 32. Have you not expressly said in answer to Int. 29 that you did understand Int. 26 to refer to Int. 16?

A. I have, but I did not understand the previous question.

X Int. 33. Do you mean the last previous question?

A. Int. 31.

X Int. 34. Will you please state whether there is anything in Int. 31 which is not perfectly plain and if so, what it is?

A. There is not at the present time, no sir, I do not think.

391 X Int. 35. There has been no change in Int. 31 since it was submitted to you, has there?

A. No, sir, but I understand it at the present time, after explanation, after hearing the question read. I did not understand it before.

X Int. 36. How did you understand it before?

A. As I said, I did not understand it before.

X Int. 37. Do you mean to say that you did have any understanding of the meaning of Int. 31 at the time it was given to you?

A. I did not seem to have the meaning that the gentleman desires.

X Int. 38. Did you have any understanding whatever about it, and if so, what was it?

A. I had the understanding that there was not anything in these two Ints. that bore upon each other, but as stated above on having the question re-read I think I now fully comprehend it.

X Int. 39. Then you understood at the time that Int. 31 was given to you, and have always so understood it, that the two Ints. therein mentioned had no reference to each other?

A. No. I did not understand it so at the time it was given.

X Int. 40. But you have used the words in answer to Int. 38, "I had the understanding that there was not anything in those two interrogations that bore upon each other." How do you reconcile it with your last answer?

A. My last answer does not read as I wish it to stand. I wish it to read, I did understand it so at the time it was given.

X Int. 41. You now say that in answering X Int. 31 at the time it was given you did not understand X Ints. 26 and 16 had any reference to each other. Will you please state what your understanding was at the time you answered X Int. 31, as you have testified in answer to Int. 35, that you did not understand it at the time, it was given in the way that you afterwards understood it.

A. I have not at the present time a clear understanding of that or the following questions sufficient to answer.

X Int. 45. Then you mean to say, do you not, that your understanding is so confused about the deposition which you have given that you cannot clear it up?

392 A. No, sir; I am not so confused that I cannot clear it up. If the questions and their meanings are so presented that I can understand these questions, I mean from 16th Int., I can answer them.

X Int. 46. Will you point out any question which you cannot understand, and state fully why you cannot understand it?

A. Please read after Int. 16.

Adjourned to September 5, 10 a. m., at Mr. Dane's office in New York.

NEW YORK, *Sept.* 5, 1888.

Accounting continued.

Parties present as heretofore.

(Cross-examination of the witness, JOHN E. EARLE, continued:)

X Int. 33. You have testified that you made an affidavit at the request of Mr. Knapp, which was intended for use in a suit on the complainant's patent; were your statements in that affidavit concerning the Kirkham and Shaw patents substantially what you have testified here?

A. If I referred to those patents in that affidavit, I have no doubt they were.

X Int. 34. Does your testimony in this deposition concerning the operativeness of second claim of complainant's patent differ substantially from your views of that subject at the time you made the affidavit referred to?

A. If that affidavit was made after I had first seen a dress form like complainant's patent, it does not differ.

X Int. 35. Did you testify or make affidavit concerning the operativeness of the second claim of complainant's patent in any proceeding before you had seen a dress form like complainant's patent?

393 A. I had not made an affidavit or testified in reference to the inoperativeness of the combination of the second claim until after I saw complainant's form.

X Int. 36. Have your views concerning the scope of the invention of the complainant's patent and of the infringement thereof by devices which you have been called to examine since you first testified in any suit upon it, changed since you first testified in any suit thereon, and if so, in what particulars?

A. Only as qualified by the subsequent discovery of the inoperativeness of the second claim.

(Redirect examination by Mr. DANE:)

R. D. 37. In any testimony heretofore given by you in any matter or action in which the second claim of the complainant's patent formed the base, did you enter into details and set forth the facts as clearly as in the present cases in which you are now testifying?

A. I believe not, so fully.

R. D. 38. Did you give any testimony either in the Massachusetts or Connecticut case or cases based upon interrogatories that related to either the Shaw-Kirkham or Robbins patents or what is known as the Diamond form.

A. No, sir.

R. D. 39. Have you ever testified in any of the Massachusetts or Connecticut suits concerning the operativeness or inoperativeness of the second claim of plaintiff's patent in response to interrogatories from both on direct and redirect examination.

A. Not until the present examination.

R. D. Int. 40. I wish to call your attention again to defendants' form A and ask you to tell the court whether or not the skirt portion thereof is adjustable at the hip, base or lower part of said skirt independently of each other and if yea, how?

A. They are not independently adjustable. The braces of the hip portion are operated by a right-hand screw on the central rod, and the braces which adjust the lower portion of the skirt are operated by a left-hand screw on the central rod, so that by turning the rod in one direction expansion is simultaneously produced, both at the hip and lower portion and *vice versa*.

R. D. Int. 41. The Hall form of the complainant is pro-
394 vided with two series of inclined braces, one set at the base and another set at the hip, whereby the upper and lower portion of the skirt is independently adjusted. Now I ask whether you find these equivalents in said form A?

A. Inasmuch as in the Hall form the braces which adjust the hip portion are independent of the braces which adjust the lower portion, so that either the hip or the lower portion may be expended or contracted independent of the other portion and as in said form A there is no such independence of adjustment as stated in my last answer, the adjusting devices cannot, in my opinion, be considered equivalents.

R. D. Int. 42. Referring now to the several Exhibit Dress Forms, said to have been produced by the defendants and to the Hall form of complainant, particularly to the skirt portions thereof, tell the court what parts are dispensed with in the Knapp forms, contained

in the Hall, so far as the means for adjusting the braces are concerned.

A. In the Hall form the collars which support the braces were all loose on the central rod and each is supported by an independent adjustable rest on the rod, by means of set-screws, the band around the outside of the ribs serving to resist the natural tendency of the braces to collapse.

In the Knapp forms the collars which carry the braces are made adjustable to expand or contract the form, by screws on the central shaft working through the collars.

In the Knapp forms, therefore, the rests which support the loose collars in the Hall patent are omitted and the band, of the Hall patent, without which adjustment of the Hall form cannot be made, is also absent from the Knapp forms.

In the Hall form there are two sets of oppositely inclined braces to adjust the hip portion, whereas in the Knapp forms there are but one set of braces to adjust the hip portion.

R. D. Int. 43. What is the difference in their operation, if any?

A. In the Hall form the adjustments are necessarily made independent of each other. That is to say, the rests on the central rod must each be moved by hand and seperately set by their own set-screw. The band must also be adjusted by itself, independent of the rests. To adjust the rests it is necessary to reach inside
395 the form until the hand can grasp the rests, so that if a skirt or dress be on the form the adjusting devices are enclosed by the skirt or dress; whereas, in the Knapp forms the adjustment is produced by means of the central rod and that rod extends above the top of the form where it is always accessible and never covered by the skirt or dress as the case may be. Again, in the Knapp forms, because of the adjustment by screw-threads on the rod, the adjustment is positive and holds the collars at any point to which they may be adjusted by the central and screw rods, and the collars cannot slip from such position; whereas, in the Hall form, there is an absence of that positive adjustability because each of the rests which support the collars are loose upon the rod and dependent upon the hand to adjust them and the set-screws to hold them.

JOHN E. EARLE.

Miss MARTHA L. KELLY, a witness produced on the part of the defendants, sworn and examined by Mr. DANE:

Int. 1. What is your name, residence and occupation?

A. My name is Martha L. Kelly; reside at 28 Wyckoff street, Brooklyn, N. Y.; I am a saleslady.

Int. 2. In whose store are you engaged, and where is such store located?

A. The store of Henry Bristow, 294 Fulton street, Brooklyn, N. Y.

Int. 3. State whether or not dress forms are sold in said store, and if yea, state whose make, if you know.

A. Yes; Knapp's make; Knapp's forms.

Int. 4. What acquaintance, if any, have you had with the Hall forms, similar to the one marked Plaintiff's Skirt?

A. Somewhat over a year's experience in handling and selling them.

Int. 5. What other dress forms have you seen in use, on sale, or otherwise, other than the Hall and the Knapp form?

A. I have seen the Diamond, the Wilson, and the Everett.

Int. 6. Which of the several forms to which you have referred is the most desirable, so far as your experience is concerned?

A. The Knapp form.

Int. 7. What feature or features does the Knapp form
396 contain which makes it more desirable than any of the others named?

A. Its manner of adjustment is simpler and more easily understood and operated, and its manner of construction is such as to make it stronger and more durable.

Int. 8. State whether or not the manner of adjusting the skirt at top of post or central staff is more desirable than by clamps or set collars, with which plaintiff's skirt is provided.

A. Yes, it is.

Int. 9. What objection have you found, if any, in handling and dealing in the Hall forms of the complainant, due to its construction and mode of operation?

A. The liability of the clamps or set-screws sliding up and down the central rod after the form has been adjusted to the desired size.

Int. 10. Does the same difficulty exist in the Knapp form of the defendants?

A. No, sir; it does not.

Int. 11. Why not?

A. Because the entire skirt form is regulated by two knobs, at the top, which tend to increase or decrease it in size, and makes it perfectly firm, consequently being impossible for it to move without turning the certain knobs at the top of the form.

Int. 12. What features does the Hall form of the plaintiff possess that makes it in any respect more desirable than the Everett, Diamond, or Wilson?

A. Its three separate adjustments, to wit, of the waist, hips, and lower part of the skirt.

Int. 13. Do you find in defendants' forms A and B the three adjustments named in your last answer?

(Objected to as immaterial; admitted and exception taken.)

A. No, sir.

Int. 14. In your experience in handling and selling the Hall form, have you found any difficulty in their means of adjustment, their manner of adjustment?

A. Yes, sir, I have.

397 Int. 15. Please explain the difficulty.

A. To adjust the Hall form it is necessary to tighten screws and loosen them, which makes it very hard on the fingers and also

does not make it as firm as the manner of adjustment in the Knapp form.

Int. 16. State whether or not you found them liable to slip, meaning the set-screw and clamps.

A. Yes, sir, I have.

Int. 17. In making the three adjustments, to wit, waist, hip and lower part of skirt in the Hall form, what is required to enable the user to operate or adjust, as you have stated?

A. To increase or decrease the size of the form it is necessary to loosen and tighten three screws on the central rod, and also by means of the ribs and two tapes.

Int. 17. Are the two tapes necessary to enable the user to secure the adjustment referred to?

A. Yes, they are.

(Cross-examined by Mr. PERKINS:)

X Int. 18. Where and for whom did you handle and sell the Hall forms, and during what period of time?

A. I have handled them at Saratoga, at 296 and 294 Fulton street, Brooklyn, for Henry Bristow. It was at different periods. In 1884 it was at Saratoga; I handled them two month there, and in the fall and winter of the same year about six months, and a part of the succeeding winter, and six months or more in 1887, commencing about the first of the year, a little before the first of the year, when the holidays commenced.

X Int. 19. Did Mr. Bristow have for sale the Knapp and Hall forms together, during any part of the period you have named, and if so, what?

A. I don't remember that he did.

X Int. 20. Then he took up the sale of the Knapp forms some time in 1887, did he not?

A. I don't remember exactly what time he took it up.

X Int. 21. Was it before or after he had the Hall forms for sale?

A. It was after, I think; I am not positive about Mr. Bristow's business.

Adjourned to September 6th, 10 a. m.

398 NEW YORK, *Sept.* 6, 1888.

Accounting continued.

Parties present as heretofore.

(Cross-examination of the witness, MARTHA L. KELLY, continued:)

X Int. 22. How near to the store of Mr. Bristow has been the headquarters of Mr. Appleton in Brooklyn, since Mr. Bristow began the sale of the Knapp form?

A. About four doors. Ours is No. 294, Appleton's 306, on the same street, and in the same block.

X Int. 23. The competition between Mr. Appleton and Mr. Bristow in the dress-form business has been considerable, has it not?

A. Well, I don't know that it has.

X Int. 24. Don't you know that they have fought each other considerably to get the Brooklyn trade?

A. No, sir; I do not.

X Int. 23. Just what are your duties in Mr. Bristow's store?

A. I am there to sell the goods that he gives me to sell.

X Int. 24. Are you familiar with most of the sales which are made, and the methods adopted by Mr. Bristow to sell dress forms?

A. Partly, yes.

X Int. 25. Does he consult with you about his methods of introducing and selling his dress forms?

A. No, sir; he does not.

X Int. 26. Do you mean to say that there has been no competition whatever between the two stores of Mr. Appleton and Mr. Bristow in the dress-form trade?

A. I do not know that there has.

X Int. 27. You have advertised dress forms at less price than dress forms sold by Mr. Appleton, have you not, by placards in the window?

(Objected to on the ground that it has not been shown that
399 witness knows the prices at Appleton's, and further that it does not specify the kind of form, or whether such embodied the claim of the Hall patent in suit, and that the question is presumptuous.)

(Question admitted, and exception taken.)

A. We have had dress forms of different prices. I do not know the prices of all Mr. Appleton's forms, and I could not answer that.

X Int. 28. Don't you know the price at which Mr. Appleton was selling the regular Hall skirt forms?

A. Yes; I know the price of his regular skirt form. I have not known the price of it all the time since Mr. Bristow commenced selling the Knapp's.

X Int. 29. How long have you known the price at which Mr. Appleton was selling it in Brooklyn?

A. I do not know exactly how long I have.

X Int. 30. At what price did you know the Hall skirt form was offered for sale by Mr. Appleton in Brooklyn, at any time?

A. $3 and $3.50—two styles.

X Int. 31. Have you ever known them to be offered at any other price in Brooklyn by Mr. Appleton, and, if so, what?

A. I have not; but the price could be easily changed without my knowing it.

(All after the word "not" objected to as irresponsive.)

X Int. 32. Did not Mr. Bristow advertise Knapp's skirt forms at a less price than $3 or $3.50, by placards in the windows or on the forms?

A. Some styles he did.

X Int. 33. At what price or prices?

A. $1.25 and $2.25.

X Int. 34. Were there not words on the placard which implied that there had been a reduction?

A. Not on the skirt forms.

X Int. 35. On what forms?

A. On full-dress forms.

X Int. 36. Do you mean to say that you think that Mr.
400 Appleton would have sold all the dress forms sold by him and Mr. Bristow if Mr. Bristow had not been there, and *vice versa*.

(Objected to as frivolous, immaterial and irrelevant. Question admitted and exception taken.)

A. Well, I don't know. I cannot tell whether they would or not.

X Int. 37. Then you have not any opinion about it. You think it may or may not have been?

(Objected to, as the witness had not been shown to be competent to answer upon the subject inquired about, and therefore inadmissible. Question admitted and exception taken.)

A. I don't know how it would have been.

X Int. 38. Are you aware or have you heard that there is a suit pending against Mr. Bristow by the proprietors of the Hall form?

(Objected to as wholly immaterial and irrelevant; that the fact, whatever it may be, had no bearing whatever on this accounting and therefore is wholly inadmissible, and the examiner is asked to strike out the question. Question admitted, motion to strike out denied and exception taken.)

A. I knew, or heard rather, that there was a suit against him, but I did not know who was bringing it. I do not know anything about Mr. Bristow's private business.

X Int. 39. Did you not understand that the suit was between Mr. Bristow and parties who were in some way connected with the Hall form?

(Same objection and request as to last question. Same ruling and exception.)

A. No, sir, I did not.

401 X Int. 40. How did you know about it?

(Same objection and request as to X Int. 38. Same ruling and exception.)

A. I heard indirectly.

X Int. 41. What did you hear?

(Same objection, request, ruling and exception as to X Int. 38.)

A. Of some suit against Mr. Bristow. What the suit was about I did not know.

X Int. 45. Did you not suppose that he was sued for selling the Knapp forms?

(Same objection, request, ruling and exception as to X Int. 38.)

A. No, sir; I did not.

X Int. 46. Did you not understand or suspect anything whatever about the case as to the parties or the cause of it and had not the slightest idea about it beyond that it was a suit?

(Same objection, request, ruling and exception as to X Int. 38.)

A. No, sir. I did not know anything about it, or think anything about it.

X Int. 47. Do you mean to say that up to the minute you began your testimony yesterday you had not the slightest intimation, directly or indirectly, or any suspicion, however vague, that the suit against Mr. Bristow related to, or involved in any way, either the Hall or the Knapp forms?

(Same objections, request, ruling and exceptions as to X Int. 38.)

A. I do mean to say so. I had no knowledge of the suit.

402 X Int. 48. I suppose that the simplicity and ease of adjustment in the Knapp form to which you allude is the means of adjusting by the knobs at the top.

A. Yes, sir.

X Int. 49. Have you seen the Wilson form used for draping a lady's dress skirt?

A. No, sir; I have not.

X Int. 50. Have you seen the Everett used for that purpose?

A. No, sir.

X Int. 51. Or the Diamond?

A. No, sir.

X Int. 52. Have you seen the Diamond on sale for that purpose?

A. Yes, sir.

X Int. 53. Have you seen the Everett on sale for that purpose, or the Wilson?

A. No, sir.

X Int. 54. Don't you know that Mr. Bristow has made efforts to get the Hall form for sale at any time since he commenced the sale of the Knapp?

(Objected to as frivolous and immaterial. Question withdrawn.)

(Redirect examination by Mr. DANE:)

R. D. Int. 55. Did you ever see the skirt form known as the Le Moine either in use or on sale?

A. On sale I have seen it.

R. D. Int. 56. Please point out from among the several skirt forms here, any that you may find, either the same or similar to what you have referred to in your last answer.

A. This which I now touch represents both the Le Moine and the

Diamond. It is called the Diamond and said to be made by the Le Moine Company.

(Defendants' counsel place the exhibit in evidence and the same is marked Defendants' Exhibit the Diamond.)

403 R. D. Int. 57. Have you ever sold or handled for sale what you have termed the Diamond or Le Moine?

A. Yes, sir.

R. D. Int. 58. And in handling them did you or not become familiar with their mode of adjustment?

A. Yes, sir.

R. D. Int. 59. Since testifying yesterday concerning the time when you first handled the Hall form have you ascertained when you first began to handle the Hall form and if yea, when?

A. The last time I handled them was in the fall of 1886 and fall and winter of 1887.

MARTHA L. KELLY.

Subscribed and sworn to before me, this 6th day of September, 1888.

E. E. MARVIN,
Master pro hac vice.

Mr. JOHNSON, a witness produced by the defendants, sworn and examined by Mr. DANE:

Int. 1. What is your name, age, residence and occupation?

A. My name is Willard H. Johnson, age 33 years, residence 28 Wyckoff street, Brooklyn, New York, and my occupation is salesman for Henry Bristow, 294 Fulton street, Brooklyn.

Int. 2. State whether or not dress forms are sold in said store and if yea, whose make, if you know.

A. Yes, sir. Knapp's dress forms and drapers.

Int. 3. What acquaintance have you had, if any, with the Hall forms of the complainant, similar to the exhibit here marked Plaintiff's Skirt?

A. I have been acquainted with the form ever since 1884. We know it more as "the skirt draper."

Int. 4. What other dress forms have you seen in use or on sale other than the Hall and Knapp forms?

A. The Everett form, the Le Moine form, Diamond form and the Wilson form.

404 Int. 5. Which of the several forms, so far as your experience extends, appears to be the most acceptable to the public?

A. The Knapp forms.

Int. 6. Why, if you know?

A. Their being made stronger, more durable, easier to adjust at all times; and will stay where you put them—they will not slip.

Int. 7. With your experience, is there any difficulty with the "slipping" referred to in your last answer, in the Hall forms?

A. Yes; the slipping of the clamps or set collars down the rod when a heavy skirt is placed upon the form.

Int. 8. Does there appear in practice to be any difficulty in adjusting the Hall form after a skirt is placed upon it?

A. Yes, sir. It is necessary to loosen three clamps to raise or lower them on the rod and it is necessary to remove the skirt in order to do this.

Int. 9. Does this difficulty exist in the Knapp form of the defendants?

A. No, sir.

Int. 10. What features does the Hall form of the plaintiff possess which render it any respect more desirable than the Wilson, Diamond, Le Moine or Everett?

A. Being more easily adjusted and more accurately adjusted and having three adjustments.

Int. 11. What three adjustments do you refer to?

A. At the waist, hip and skirt.

Int. 12. What portion of the Hall form marked Plaintiff's Skirt do you term the waist?

A. The upper tape portion or upper end of the ribs.

Int. 13. Which portion of the said exhibit do you term the hip part?

A. The point here, where the second tape or band, goes around.

Int. 14. And these two points referred to in your last two answers constitute two of the three adjustments referred to in one of your previous answers?

A. Yes, sir.

Int. 15. Point out upon the said exhibit the third point referred to by you.

405 A. This point, where the lower braces are joined on to the ribs.

Int. 16. By what means do you adjust the waist portion of the Hall form, independent of the hip or lower part of the skirt; I mean either larger or smaller, independent of the other two adjustments?

A. By drawing up the upper tape or letting it out.

Int. 17. To expand or contract the hip portion of the Hall form and not the waist, by what means is it accomplished?

A. By adjusting the second tape to the desired size and loosening the clamp or set collar and moving it down on the rod and fastening the set collar to hold it there.

Int. 18. As there are two set collars or clamps, as you term them, one located above the two series of oppositely inclined braces and the other beneath, does it make any particular difference which of them is moved in order to expand or contract the hip portion of the Hall form?

A. No, sir.

Int. 19. Without loosening the second tape or band upon the Hall form, supposing it is drawn and secured snugly about its circumference, by what means do you make the third adjustmeant at the lower part of the skirt?

A. You would raise the lower clamp, carrying with it the lower series of braces, to the desired height and fasten it there.

Int. 20. Do you find in Defendants' Exhibit A, in the skirt part thereof, the three independent adjustments of the Hall form?

A. No, sir.

Int. 21. Do you find the three independent adjustments of the Hall form in Defendants' Exhibit B?

A. No, sir.

Int. 22. Do you find the three adjustments referred to in Complainant's Exhibit, Defendants' Complete Dress Form?

A. No, sir.

Int. 23. Do you find the three adjustments referred to in Complainant's Exhibit, Defendants' Skirt Form?

A. No, sir.

Int. 24. Are the two tapes necessary in the Hall form to get the two adjustments at the waist band and hip?

406 A. Yes, sir.

Int. 25. When first, how early, did you first become acquainted with the use and sale of dress forms?

A. About 1875. I could not say it was just that time; or either a little before or a little after.

Int. 26. What other form other than the Knapp has Mr. Bristow sold during the period of time that you have been with him?

A. Everett, Le Moine and Hall.

Int. 27. Has Mr. Bristow kept dress forms of different makes on sale at the same time and if yea, what makes?

A. Yes, sir, he has had the Everett, Hall and Knapp forms.

Int. 28. For about what length of time has Mr. Bristow or yourself handled the Everett form?

A. About 1876 I commenced handling it. I first knew of Mr. Bristow's handling it in the summer of 1880, I think.

Int. 29. When did you enter the employ of Mr. Bristow?

A. It was the winter of 1880-'81. Whether before or after Christmas I cannot recollect.

Int. 30. In whose employ was you prior to Christmas, 1880?

A. The Domestic Sewing Machine Company at corner Broadway and 14th street, New York city.

Int. 31. At what place did you see the dress forms in 1875 and 1876?

A. The fashion-room on the second floor of the Domestic Sewing Machine Company's building, corner Broadway and 14th street, New York.

(Cross-examined by Mr. PERKINS:)

X Int. 32. Does not the adjustment of the plaintiff's skirt at the hip portion likewise adjust generally the form at the other two points of adjustment to which you have referred, that is, expand or contract it throughout its entire length. I mean in a general way? When I use the word general I mean measurably, that is, an adjustment at the hip portion measurably adjusts it at the waist and bottom portion.

A. For practical use, no; but to do it up to put it away, yes.

407 X Int. 33. But as a matter of fact there is an expansion or contraction of the waist and the bottom whenever there is an expansion or contraction of the hip portion?

A. Yes, if set collar or clamp is loosened on the upright rod.

X Int. 34. But could you contract the hip portion without releasing one of the set collars?

A. Not without bending the wires.

X Int. 35. And in expanding the hip portion it would not be necessary to loosen one of the set collars, would it?

A. I should think not; but to hold it there, it would be necessary to loosen the collar and move it down.

X Int. 36. Does Mr. Bristow now have on sale the Hall form or the Everett or Le Moine, and if so, which?

A. No, sir.

X Int. 37. How long since he has had either of these three makes on sale?

A. I could not answer. I don't know the dates.

X Int. 38. Which did he have last?

A. In the general stock I should say the Hall form was, but in every store there is old stock laying around.

X Int. 39. About when do you recollect that he last put in stock for the purpose of selling the Hall form?

A. I don't know.

X Int. 40. How long before he begun the sale of the Knapp form, did he last have on sale the Everett?

A. It was some time; I could not say the date.

X Int. 41. Can you tell whether it was before or after he began the sale of the Hall form, that he gave up the sale of the Everett form?

A. We had them all three on sale at the same time, that is, the dress forms.

X Int. 42. In your answer to X Int. 40 you have stated that he gave up the sale of the Everett form before he began the sale of the Knapp. I suppose that you mean by that, do you not, that he practically abandoned the sale of the Everett before he took up the Knapp?

A. No, sir; the forms have been in stock as long as there was call for them.

X Int. 43. Do you have any positive recollection that there
408 was any call for the Everett form after he took up the sale of the Knapp?

A. I don't know.

X Int. 44. Don't you consider the Everett form as good or better than the Knapp form?

A. No, sir.

X Int. 45. Why not?

A. Because of the papier-maché bust of the Knapp form and its expansion in four different directions, while the Everett expands only in two directions.

X Int. 46. Do you consider the latter difference of any particular importance?

A. I think it is.

X Int. 47. Don't you think if the Everett had a papier-maché bust instead of a wire, that it would sell as readily as the Knapp?

A. No, sir.

X Int. 48. Don't you think they would sell nearly as many if they were presented with equal skill to the customers?

A. I hardly think so; still, I am no judge.

X Int. 49. Is there any other form on the market, except the Hall and the Knapp, which has the expansion in all directions instead of two, speaking of complete forms?

A. Not that I know of.

X Int. 50. When you speak of Mr. Bristow's having several styles of dress forms at sale at once, do you mean to say that he was pressing the sale of two or more styles at once, or while advertising and introducing one particular style, he simply supplied others which were incidentally called for?

A. He showed them all and delivered whichever the customer wished.

X Int. 51. Do you consider your memory reliable on the particulars for which I have inquired in these my interrogatories?

A. In all that I have understood the questions.

X Int. 52. Have you not stated that your memory is not good?

A. On dates; I have.

X Int. 53. What do you mean by that? That you do not readily measure periods of time or don't recall days and months and years?

409 A. Days, months and years without referring to memorandums.

R. D. Int. 54. Do not the Le Moine and Wilson forms admit of two adjustments, to wit, one at the waist band, and the other at the skirt part below it?

A. Yes, sir.

R. D. Int. 55. Do you know Mr. Appleton, the agent for the sale of the Hall forms?

A. Yes, sir.

R. D. Int. 56. State whether he has or not of late endeavored to induce you or Mr. Bristow to buy and sell the Hall forms of the complainant.

(Objected to as improper on a redirect examination and as immaterial and further as leading. Admitted.)

A. Yes, sir; he did try to induce Mr. Bristow.

R. D. Int. 57. Did Mr. Bristow accept or reject the proposition made by Mr. Appleton to buy and sell the Hall form?

A. Mr. Bristow objected to accepting to the proposition of selling the forms.

R. D. Int. 58. Then he was unwilling to accept of Mr. Appleton's proposition?

(Objected to as leading and immaterial. Admitted and exception taken.)

A. Yes, sir.

R. D. Int. 59. Does not the Diamond form expand in all directions circumferentially?

A. Yes, sir.

R. D. Int. 60. Would not the Everett form in your opinion sell just as well as the Knapp if it had at the top the means for adjusting the ribs of the form by the screw-threaded rod, the same as the Knapp forms in evidence?

(Objected to as leading. Admitted and exception taken.)

410 A. I don't think it would.

R. D. Int. 61. Would it not, with such adjustment, in your opinion, sell better than the Hall form?

(Objected to as leading and also inquiring about matters not gone into in the cross-examination and as calling for an opinion. Admitted and exception taken.)

A. I think under such changes the Everett would sell best.

R. D. Int. 62. State whether or not the advantage of the top adjustment of the Knapp forms applied to the Everett would be the main feature that would make it sell more readily over the Hall, Everett, Le Moine or Wilson forms? I am inquiring as to the skirt form.

(Same objection as to Int. 61. Admitted and exception taken.)

A. I think it would.

(Recross-examined by Mr. PERKINS:)

R. X Int. 63. Is it your opinion that a skirt form which is adjustable in all directions by means of set collars on the standard is more desirable than a skirt form adjustable only in two directions, like the Everett, by means at the top or that the latter is more desirable than the former?

A. I should say the latter, for the most of the trade.

R. X Int. 64. Then a device which makes a shapely figure and adaptable to all sizes is inferior to a device which is unshapely and which has to be carried in three sizes in stock, simply because the latter may be adjusted by means at the top instead of set collars on a standard.

(Defendants' solicitor objects to the form of the question because the shapeliness of the form is not in controversy, which is obvious from the inspection of the skirt form of the complainant. Question admitted and exception taken.)

411 A. I did not know that the Everett was made in the skirt form in three sizes. Both forms at the same price, the latter would sell more readily.

WILLARD H. JOHNSON.

Subscribed and sworn to before me, this 6th day of September, A. D. 1888.

E. E. MARVIN,
Master, pro hac vice.

Adjourned to September 7th, 10 a. m.

NEW YORK, *September 7th*, 1888.

Accounting continued.
Parties present as heretofore.

Mr. MANCHESTER, a witness on the part of the defendants, sworn and examined by Mr. DANE:

Int. 1. What is your name, age, residence and occupation?

A. My name is Francis L. Manchester; my age is 41 years; my residence is at Brooklyn, N. Y., and my occupation manufacturer.

Int. 2. Are you the Francis L. Manchester defendant named in a recent suit brought in the U. S. circuit court, E. D. of N. Y., heard before and decided by his honor Judge Benedict, in which Charles A. Morss was complainant?

A. I am.

Int. 3. Please refer to Fed. Rep., vol. 32, pp. 282 and 283 and tell us whether or not that is the opinion and decision in the suit referred to in my previous question and your answer thereto.

412 A. It is.

Int. 4. Can you produce before the examiner and master in these cases, a dress form of the kind against which the said suit was brought which was supposed to have been an infringement of the second claim of the Hall dress-form patent, No. 233,240, of October 12, 1880.

(Complainant objects to the question as witness has not qualified himself to compare mechanical devices, and his testimony would be secondary evidence. Question admitted and exception taken.)

A. I can produce such an exhibit with the exception of the waist band.

Int. 5. Is the exhibit produced by you the same in all respects as the dress form against which the suit was brought, with the exception of the waist band.

(Same objection and also as leading; same ruling and exception.)

A. It is.

Int. 6. What do you term the waist band on the exhibit produced by you?

A. That which is above the upper part of the ribs, where the ribs terminate the waist band commences.

Int. 7. What contrivance did the form in that suit have in lieu of the waist band just referred to by you?

(Question objected to and ruled out and exception taken.)

Int. 8. In what way did the form in said suit differ from the form before you, so far as the part above the ribs is concerned which you have termed the waist band?

(Question objected to for same reasons and ruled out and exception taken, notice of motion given.)

413 Int. 9. In what respect does the form before you differ from the form against which the suits were brought in E. D. of N. Y.

(Same objection as before, and further, that the question does not exhibit to the witness the form he is expected to compare the device before him with, nor does it even call for the comparison with any exhibit filed in the case referred to. Question ruled out and exception taken.)

Int. 10. Are the ribs, together with the mode of adjustment appearing in the form before you in the defendants' exhibit marked "the Diamond," the same and operating the same as any of the forms used as exhibits in the suit in said eastern district, brought by complainant, to be infringements of the second claim of the Hall patent already specified?

(Objected — as being secondary evidence and second as asking for an opinion upon a mechanical question about which the witness has not qualified himself to testify. Question ruled out, for the reasons stated and because indefinite and exception taken.)

Int. 11. Who manufactured the form, against which the suit was brought against you by Charles A. Morss?

(Objected to as not stating definitely to what particular device the question refers. Question admitted and exception noted.)

A. The Le Moine Manufacturing Co. of Brooklyn, N. Y., manufactured the forms.

Int. 12. For whom, if you know?

A. For the general trade.

Int. 13. What had you to do with the forms that caused this suit to be brought against you by Charles A. Morss?

A. I had the charge of the office and financial part of that manufacturing company.

Int. 14. Are you a member of the Le Moine Manufacturing Co.?

414 A. I am.

Int. 15. And you were at the time the suit was brought against you?

A. Yes, sir.

Int. 16. You testified in that suit, did you not, concerning the dress forms made by your concern?

(Objected to as secondary evidence. Question admitted and exception taken.)

A. I did.

Int. 17. And you remember the forms that were used in that case as exhibits said to have been made or produced by you or your concern, do you not?

(Objected to as leading; admitted and exception taken.)

A. I do.

Int. 18. In what respect does the form before you marked Defendants' Exhibit, the Diamond, differ from those or any of them, made by your concern in evidence in the said suit in the eastern district of New York?

(Objected to as secondary evidence and because witness has not qualified to testify on mechanical questions. Question ruled out. Defendants' counsel insists that the witness has not been shown to be unqualified to testify concerning whether the form before him is like or similar to the forms made by his company but on the contrary, states that he — one of the principal managers of the company and also the defendant and that he testified in the suit against him concerning the forms made by this concern and for the reasons stated, insists that it is not only competent but entirely admissible to inquire whether the exhibit before him is similar or dissimilar to the ones in said suit and therefore excepts to the ruling upon the question and asks that question may be reconsidered. Previous ruling adhered to.)

415 Int. 19. Do you have the general management or charge over the manufacture of forms made by your concern?

A. In so far as the office department is concerned.

Int. 20. Are you familiar with the construction and operation of the form, made by your concern?

(Objected to as leading. Question admitted and exception taken.)

A. Yes, sir.

Int. 21. Is the form before you, marked Defendants' Exhibit, "The Diamond," a dress form made by your concern?

A. It is.

Int. 22. Are such capable of being expanded and contracted at the waist and also at the lower portion of the skirt?

A. They are.

Int. 23. Did the ones for which the suit was brought against you in the eastern district of New York have the two adjustments referred to?

(Objected to as secondary evidence and also that he is not qualified as an expert to compare forms. Question admitted and exception taken.)

A. They did.

Int. 24. By what means do you make the waist adjustment in Exhibit "The Diamond"?

A. By an outward movement, pulling it outward with the hands.

Int. 25. What name do you give to the jointed link arrangement that forms the waist band in Exhibit The Diamond?

A. Lazy tong.

Int. 26. What other forms have you made and put upon the market that were provided with different means for adjusting the waist band, and what other contrivance was employed, if anything?

A. A form upon which we were sued by Mr. Morss, and known as our first Diamond form, had a non-elastic band with graduated marks thereon, which was held to the ribs by a number of
416 posts riveted on each apex of the ribs at the top, the form prior to that known as the Le Moine; the waist measurement was secured by an expansion of the whole form.

(Answer objected to as irresponsive, so far as it relates to the connection between the forms and the suit referred to; also objected to as secondary evidence, the best evidence being the article itself, which it does not appear cannot be produced. The master rules out the phrase in the answer "upon which we were sued by Mr. Morss" as secondary evidence. Defendants' counsel asks to have his exceptions to the ruling noted.)

Int. 27. In what respect, if any, did the non-elastic band, which you say one of the forms contained on which suit was brought against you by Charles A. Morss, differ from the graduated band upon the upper end of the ribs at the waist band of defendants' form C.

(Objected to as witness has not qualified to state the differences, and as involving a description of a band which it does not appear cannot be produced. Question ruled out, and exception taken.)

Int. 28. For what purpose was the non-elastic band with which the form or forms were provided, which you say was involved in the Morss suit against you?

(Objected to as calling for an identity of a certain form with one said to be involved in the Morss suit, reference being made to an answer of the witness which has already been ruled out. Question admitted and exception taken.)

A. It was to obtain the various waist measurements required in adjusting the form to a similar waist measurement of any dress to be draped thereon.

Int. 29. State whether or not, the graduations were numbered.

417 (Objected to as secondary evidence. Admitted and exception taken.)

A. They were in inch graduations or spaces with fractional graduations intervening of an eighth.

Int. 30. What forms were you manufacturing and selling at the time the said suit was brought against you by Charles A. Morss, and how were such adapted to be adjusted at the waist band and below?

(Objected to as secondary evidence. Question admitted and exception taken.)

A. There are two questions. To the first question, a form with a non-elastic waist band with graduation marks thereon and two series of stretches attached to the ribs and upon two sliding blocks operating upon an upright post; we were not making but this one form when the suit commenced. The adjustment was confined to

the sliding blocks, confined at the waist by the non-elastic band which was adjusted previously, the lower expansion was general. There was no independent expansion of the lower part. It was the expansion of the upper part that expanded the lower part.

Int. 31. About how many years have you, in the concern of which you are a member, been manufacturing and dealing in dress forms, and at the same time you may state whether you or the Le Moine Co. are engaged in such business at the present time?

—. About six years, and we are still engaged in the manufacture of dress forms.

Int. 32. Are you still manufacturing dress forms of the kind against which suit was brought by Charles A. Morss, and referred to in the opinion of his honor Judge Benedict in that suit?

(Objected to as in effect calling for a description of exhibits used in that case and as therefore being secondary evidence. Question ruled out and exception taken.)

418 Int. 33. Did your firm continue the manufacture of dress forms of the kind against which suit was brought against your concern by Charles A. Morss, up to and after the decision of Judge Benedict, previously referred to?

(Same objection, same ruling and same exception.)

Int. 34. Had you manufactured any other form for sale, other than these against which suit was brought against you by Charles A. Morss, other than the Le Moine, prior to the time when the suit was brought against you by Charles A. Morss?

(Same objection, same ruling, and same exception.)

Int. 35. What forms were made by you or your concern prior to Sept. 20, 1887?

(Objected to unless it appears that specimens of said forms cannot be produced. Question admitted and exception taken.)

A. Now, then, I must designate these forms:

1st. The Le Moine form.

2d. Our First Diamond form.

3d. The Improved Diamond.

Int. 36. Were the several forms referred to in your last answer involved in the suit against you by Charles A. Morss?

(Objected to as in effect calling for evidence concerning exhibits in a suit, and consequently secondary evidence. Question ruled out and exception taken.)

Int. 37. Did you make any forms, or had you made any forms up to the time suit was brought against you in the E. D. of N. Y. by Charles A. Morss, of a kind not involved or embraced in said suit?

419 (Same objection, ruling and exception.)

(Defendants' counsel asks the magistrate to kindly intimate in what way defendants can be better informed of the matter inquired

about in the question, than by asking the defendant in the suit concerning what he did or did not make at the time when such suit was brought against him, for he assumes that would certainly be a very difficult matter to ascertain the fact by any better or more competent means or method.)

Int. 38. With your experience in dealing in dress forms, what feature contained therein, if any, enables the salesman or saleslady to sell any one in preference to another, of another style or make, as a rule?

A. My experience is, that if any form of any style or make will accomplish the general results desired, that it is a matter of the gift of gab of the salesman, if it is a favorite of such salesman, that they will sell the forms they are trying to sell. As a rule, the draping forms are purchased by women. They very seldom have sufficient mechanical knowledge to distinguish a mechanical superiority. My experience is that all forms have their fate largely in the hands of the salesman.

There must be some merit in the form, but beyond that it rests with the ability of the salesman to make the sale. The favoritism of the seller has everything to do with the sale.

Int. 39. Please define your meaning of the words "draping form" used in your last answer.

A. I mean that a half form or skirt form which can be used for draping dresses is commonly known in the trade as a draping form or draping figure.

Int. 40. Do the forms marked Defendants' Form B, Defendants' Form C, Defendants' Exhibit, "The Diamond," and the part of form marked "Plaintiff's Skirt," in evidence come within the scope of the definition given in your last answer?

A. They do.

Int. 41. Then if I understand you correctly the "gift of gab" of the salesman or saleslady has more to do in accomplishing the sale of a form than any particular mechanical construction of its parts.

Do I understand you correctly?

420 A. Assuming the ability of the forms to accomplish the desired result, and the prices being even, it has everything to do with it.

Int. 42. With your knowledge of the use of dress forms is the form bearing a tag marked "Defendants' Exhibit Wilson Form," capable of giving the desired adjustment for draping a skirt in manner referred to in your answers to the 38th and 41st Ints.?

A. It is.

(The exhibit referred to in the previous question and answer is placed in evidence by defendants' counsel and marked Defendants' Exhibit Wilson Form.)

Int. 43. Does the form just put in evidence contain means for adjusting the ribs independently of each other?

(Objected to as immaterial as it does not appear whether such form was on the market at any time or was known prior to this

date. Admitted, subject to objection hereafter if not shown to be known to the trade or art in dress forms prior to the decree herein.)

A. It does.

Int. 44. It also contains a hip or waist-band adjustment and also an adjustment of the lower part of the skirt, independent of each other, does it not?

(Objected to, as the witness has not qualified to testify about mechanical devices and their operations, that whatever qualification he has as an ordinary witness only enables him to see that which is obvious and therefore his testimony would be immaterial. Question admitted and exception taken.)

A. It does. The lower adjustment is independent of the upper.

Int. 45. And the waist band or upper part of the Wilson
421 form is capable of being adjusted independent of the lower, is it not.

(Same objection, ruling and exception.)

A. It is.

Int. 46. Then if I understand you, it has three adjustments, the waist band, the lower and the independent adjustment of the ribs.

A. No, it has but the independent adjustment of the lower part and the waist band or you could adjust the hip and waist band together, independent of the lower adjustment; that is all.

Int. 47. Are not the ribs adjustable by the braces through the medium of the sliding block and set-screw and also a separate adjustment of each rib and also an adjustment of the hip or waist band?

A. They are.

Int. 48. Did you ever see a skirt form constructed in accordance with the Hall patent of October 12, 1880, upon which the suits in which you are testifying are based and one of the patents upon which the suit against you in the eastern district of New York was based?

(Complainant's solicitor objects to the question on the ground that the witness has not qualified as an expert or to compare different mechanical constructions. Question ruled out and exception taken. Complainant consents that witness may answer.)

A. I don't remember at the present time.

Adjourned to September 8th, 10 a. m.

NEW YORK, *Sept. 8th*, 1888.

Defendants' accounting continued.
Parties present as heretofore.

Examination of Mr. HENRY L. MANCHESTER continued:

Int. 49. State whether or not the dress forms made by your
422 concern are kept on sale and used to any considerable extent

in various parts of the country and particularly those of the kind about which you testified yesterday known as the Diamond.

A. Dress forms of the two patterns shown here yesterday and represented by those exhibits marked are manufactured by our firm and sold extensively throughout the United States and Canada, South America and Europe and pretty much all over.

Int. 50. Does any house in the city of New York deal extensively in the dress forms of your manufacture, if yea, name such?

A. There is. R. H. Macy & Co., Bloomingdale Bros., and there are several others that the Fowler Manufacturing Co. have their immediate accounts with and I am not posted as to their business.

Int. 51. Have you or the concern of which you are a member, ever ceased for any period of time to manufacture and sell dress forms of any kind because of a decree of any court?

(Last part of the question objected to by complainant's solicitor, as asking for reasons and motives of their conduct. Question admitted and exception taken.)

A. We have not. No decree has ever been issued against us. We have never had that reason to stop.

(Cross-examined by Mr. TUCKER:)

X Int. 52. How long have you been in any manner engaged in the manufacture and sale of dress forms?

A. Since October, 1882.

X Int. 53. In connection with the Le Moine Manufacturing Company all that time?

A. Yes, sir.

X Int. 54. Have you made during that time any other dress forms than those about which you have testified?

A. We have; but not for the market; experimental forms.

X Int. 55. You sell all your dress forms to one concern, do you not?

423 A. At the present time the Fowler Manufacturing Co. is our sole distributing agent.

X Int. 56. How long have they been your sole distributing agent?

A. I cannot remember exactly, but I should think about a year. It may be a little over, it may be a little less.

X Int. 57. Have you, yourself, ever sold dress forms at retail?

A. We have.

X Int. 58. You, yourself, personally?

A. I have, a few, not as a store or retail business.

X Int. 59. You have principally sold your dress forms at wholesale, to dealers, have you not?

A. Largely so. We have filled a good many express orders and mail orders for individual forms.

X Int. 60. With the exception of such mail and express orders, your business has been principally wholesale, has it not?

A. It has been so directly with the trade.

X Int. 61. You consider a proper adjustment at the hip the prin-

cipal thing to be desired, do you not, so that the dress may hang from it properly?

A. I consider that a hip adjustment, waist adjustment, together with the height adjustment to be the proper thing in a practical draping form.

X Int. 62. Do you consider them to be the principal things?

A. I consider them very essential.

X Int. 63. Are they the most essential?

A. Without the other combinations they would be useless.

X Int. 64. What other combinations do you refer to?

A. The standard. It is supposed that in the adjustment we have the exterior of the form, the ribs.

X Int. 65. Do you consider it essential that that should be a separate and independent adjustment of the ribs at the lower part?

A. I do not. I suppose you mean by the lower part, the flaring part. The ribs could be perpendicular from the hip; in my opinion, ours are constructed all that way.

X Int. 66. Do you consider it important that the adjustments should be made from the top as in the Knapp forms, instead
424 of by collars and set-screws of the standard, which I believe is the case with the Diamond.

A. I regard the adjustment as a matter of convenience, that is, the location of it, and think that the exterior adjusting screw is somewhat more convenient to adjust than an interior set-screw.

X Int. 67. Have you ever dealt in any other forms than those made by the Le Moine Co.?

A. Only in exchanging a number of Hall forms for Diamond forms, at the request of the owners of the Hall forms.

X Int. 68. How many such exchanges were there made, and when?

A. That, I am unable to state without the proper dates correctly.

X Int. 69. About how many?

A. I can't form an opinion. They have been exchanged at different periods by different agents I suppose for the last two years. There are always some of them coming in, sometimes more and sometimes less.

X Int. 70. Did you make these exchanges yourself personally?

A. A few of them.

X Int. 71. How many.

A. Well, I don't know how many; a few, not many personally.

X Int. 72. The other exchanges about which you have testified, you know of only from information derived from your agents, I suppose?

A. Principally.

X Int. 73. Well, do you know of any of them personally?

A. There might have been some of them about which I may have known personally. It is impossible to remember each individual case. In four or five years' business it is an impossible thing to do.

X Int. 74. You sell only the forms made by the Le Moine Co., is that so?

A. It is.

X Int. 75. And you manufacture and sell only skirt forms, that is, you do not make and sell the complete form, is that so?

425 A. We manufacture and sell at the present, only the skirt form, but are making a bust form to go with it, which is not on the market. It is not for sale yet.

X Int. 76. Have you ever seen on sale a dress form like Defendants' Exhibit Wilson Form?

A. I have not.

X Int. 77. Do you think that two salesmen or saleswomen of equal ability, one having the Diamond form for sale and the other, skirt forms like Defendants' Exhibit Wilson Form at the same price, would be able to sell equal numbers in the same time?

A. I think that under those conditions the compactness and portability of the Diamond form would give it precedence and make it a favorite over the Wilson form.

X Int. 78. What do you think the proportion would be between the two sellers?

A. I think without any difference of rate the Diamond form would undoubtedly take the larger proportion.

X Int. 79. How much the larger proportion?

A. That I cannot state. There are around all sales circumstances which affect the sales, no matter how inferior one of the articles may be, and then, too, every style has it- friends, which in localities affect its sale, so long as it will accomplish the desired results.

X Int. 80. Suppose the two sellers were side by side in adjoining booths in a bazaar or in adjoining stores on a street, and with the goods displayed in the window, so that people could have a fair chance to see them do you think the seller of forms like Defendants' Exhibit Wilson form could make many sales?

A. I cannot see where the display of the forms in the window would have anything to do with the sale of it. I think it would lie a great deal upon the seller and the views of the purchaser.

The Diamond form would still have the same preference, I believe, owing to its compactness and portability.

X Int. 81. Do you not think that in the case I have put, of two sellers, with equal gift of gab, in open market, where the articles could both be seen by the purchaser, the seller of the Diamond would take substantially the whole trade?

426 A. I assume that you intend at the same price and say that I think he would take a large proportion of it, I will not say take it all. I think that the one element of compactness would favor the seller of the Diamond very much.

I might say compactness and portability also, for because of this the purchaser could buy the Diamond and take it along with him, while with the other he could not.

X Int. 82. I ask you again if in such case the seller of the Diamond would not take substantially the whole trade?

A. I ask what you mean by substantially. I stated before that it

would undoubtedly take a greater part of the trade. I could not say the whole of it.

X Int. 83. Would not the Diamond seller take by far the greater part of the trade?

A. Well, I don't feel able to draw the exact line. I think he would take the bulk of it, a fair share of it. There would be friends of the Wilson form who would undoubtedly prefer that form aside from the advertising placards, a prominent part of the selling of these goods, it is very hard to state just exactly what proportion of goods would be sold in competition, I don't feel able to do it.

X Int. 84. What advantages, if any, in your opinion, does Defendants' Exhibit Wilson Form possess over the Diamond form?

A. I know of none unless it may be the cost of construction.

X Int. 85. Suppose the two sellers in the case supposed, instead of the Diamond form had a Knapp skirt form like any one of the three exhibits, Defendants' Forms B and C and Complainant's Exhibit, Defendants' Skirt Form or Plaintiff's Exhibit Skirt Form, do you think the seller of such Knapp or Hall forms would take the bulk of the trade in the same way from the so-called Wilson form?

A. I think that in the case of Defendants' Form C and Plaintiff's Skirt Form that the compactness and portability would apply the same as in the Diamond form which would give them the same preference over the Wilson form.

I think in regard to the other two forms they would have a preference over the Wilson, all things being equal in so far
427 as their convenience in adjusting and general appearance of construction and finish.

X Int. 86. Don't you think that skirt form like Complainant's Exhibit Plaintiff's Skirt Form would have a very great preference in the market over skirt forms like Defendants' Exhibit Wilson Form?

A. I think the case would be somewhat parallel to the case of the Diamond. I think they would hold a preference all things being equal, the adjustment is so much more convenient, assuming everything, price, etc., being equal.

X Int. 86½. Don't you think that in the wholesale trade a dealer who knew of forms like the three Knapp forms, to wit: Complainant's Exhibit Defendants' Skirt Form, Defendants' Forms B and C, and the Exhibit Complainant's Skirt Form would give some one of said four forms a very decided preference over forms like Defendants' Exhibit Wilson Form at the same price?

A. My experience has been that the wholesade trade are governed almost entirely in their purchases of goods by the demand of the retail trade; they will buy anything that they call for.

X Int. 87. Do you mean to say that the wholesale dealer would not give a very decided preference to some one of the four forms specified in the last question over the Wilson form?

A. I think that if the buyer or dealer had a demand for the Wilson form for his trade, the wholesaler would supply it, regardless of any forms and this applies to all trade; demand regulates the purchase of the wholesale trade.

X Int. 88. Suppose a wholesale dealer had no trade in dress forms but thought he would like to get up one and there was not at the time any demand in the community for any particular form where his trade was to be, do you think he would be likely to start in on the Wilson form when he could get forms like any one of said four forms at the same price?

A. It is my opinion, all things being equal, he would select Defendants' Form C, on account of its compactness, convenience, exterior adjustments and portability.

X Int. 89. I repeat my question Int. 88.

A. I answer it as I did. It is my opinion that he would select of the forms presented at an equal price for the purpose of starting a new trade Defendants' Form C in preference to the other four forms named.

428 X Int. 90. Would such dealer be likely to start in on the Wilson form in preference to forms like Complainant's Exhibit Defendants' Skirt Form at the same price?

A. I don't know.

X Int. 91. Do you think such dealer would be likely to start in on the Wilson form in preference to defendants' forms, at the same price?

A. I hardly think he would at the same price. I would not state that he would or would not; it is a pretty hard thing to tell. I only state from my views in the matter, and I think he would prefer Defendants' Form B, on account of its exterior adjustment.

X Int. 92. That is the only reason, you think, he would prefer Exhibit B to the Wilson form, is it?

A. I think the finish, the general finish, would play its part in it and have its effect upon him favorably.

X Int. 93. Would anything else affect him favorably toward Defendants' Form B besides the exterior adjustment and the general finish, that you can think of?

A. The castors might; these are conveniences that the Wilson does not possess, and the finish of the standard also makes it a little more attractive.

X Int. 94. Is there anything else?

A. I don't see anything at the present time.

X Int. 95. Would such dealer be likely to start in on the Wilson form in preference to such forms as Exhibit Plaintiff's Skirt, at the same price.

A. I cannot answer that question. There are features there, that in the Hall form would lead me against it, and there are features here in Wilson, that the Hall does not contain.

X Int. 96. Then you think the Wilson form on the whole is quite as desirable for the market as the Hall form, or would be if neither had not already an existing demand, do you?

A. I won't state that, I will say that I believe both forms will accomplish the object demanded of them.

X Int. 97. Well, now, Mr. Manchester, do you not think on the whole and comparing everything together, comparing the Wilson form with the Hall form, with their various excellencies and de-

ficiencies, that one is just about as good as the other, and are you not willing to so state?

429 A. I believe that each form will perform what is required of it in its practical use; I decline from passing judgment upon one form as to the other in the details.

X Int. 98. It is true of sales of all merchandise that a good deal depends upon the skill of the seller, as to rapidity and the amount of sales?

A. I believe that to be a fact.

X Int. 99. Is it not more desirable for a dealer to deal in dress forms so made that each can be adjusted to any size of a dress, rather than in dress forms so made that he must carry in stock three sizes, in order that he may be able to accommodate all his customers?

A. My experience has been to the effect that the trade take a natural formation of a woman, and they prefer a dress form that has a margin of sizes each way, over and under, within the limits of natural formation.

X Int. 100. You mean excluding what might be termed unnaturally or unusually large forms?

A. I do.

X Int. 101. Are the forms manufactured by the Le Moine Co. made under letters patent of the United States?

A. Entirely so.

X Int. 102. Will you please give the numbers and dates of the patents under which the said forms made by said Le Moine Co. are made?

A. They are as follows:

(Redirect examination by Mr. DANE:)

R. D. Int. 103. What advantage, if any in your opinion, does the form marked Plaintiff's Skirt, possess, over the Wilson form in evidence?

A. No other that I know of excepting possibly, compactness.

R. D. Int. 104. In handling and selling the two forms referred to in the last question and answer, does the difference of material of which two forms are constructed make any material difference in the sale of one over the other, and if yea, which would be likely to have the preference?

430 A. I think it does make a difference. I think a metal form would have a preference over a wooden structure.

R. D. Int. 105. If the various parts of the Wilson form was constructed of metal instead of wood, would it then, in your opinion, sell as readily, and serve the same purposes as Exhibit Plaintiff's Skirt?

A. I think it would if the construction of its parts were made as light.

R. D. Int. 106. Did you ever meet with or hear of the Hall form being in use or on sale before the production, use and sale of forms made by the concern of which you say you are a member?

(Objected to because it is hearsay. Question withdrawn.)

R. D. Int. 107. When first did you see or know of the Hall form on sale or in use? Was it prior or subsequent to the manufacture and sale of dress forms made by your concern?

A. About a year and a half after we had manufactured and placed upon the market and created a demand or market for an adjustable draping form.

(Last part of answer objected to. That part of the *question* containing the words "and created a demand and market for" objected to as irresponsive. Motion denied and exception taken.)

R. D. Int. 108. Why did your concern exchange forms for the Hall form?

(Objected to as immaterial. Question allowed. Exception taken.)

A. At the request of the holders of the Hall form, they preferring the Diamond.

(Recross by Mr. TUCKER:)

R. X Int. 109. How many persons ever exchanged the
431 Hall for the Diamond forms with you personally or with one of your agents in your presence, stating that they preferred the Diamond form?

A. I cannot answer just the number but I would state that within a week Mr. King bought a Diamond form of me personally and stated the fact that his wife had a Hall form which she did not like and that I would not exchange any more of them.

(Answer after the word number objected to, as irresponsive and containing matters of hearsay and motion made to strike the same out. Motion denied. Exception taken.)

R. X Int. 110. I did not ask you to state just the number, state it as nearly as you can.

A. I cannot give a correct nor nearly a correct answer as it goes over a long time, ever since we sold the Diamond form. Occasionally we have some agent of ours request us to exchange a Hall form but we have stopped exchanging.

R. X Int. 111 You had no knowledge of adjustable dress forms until you began to make them, did you?

A. I did not. I never heard or saw one prior to the manufacture of the Le Moine form.

R. X Int. 112. What business were you in before that time?

A. I was the general eastern agent of the Houston and Texas Central railway.

R. X Int. 113. And you have but very little experience in the retail sale of dress forms?

A. I have filled all orders through mail and express for one or more forms that was received by the Le Moine Manufacturing Co. up to the time of our contract with the Fowler Company making them our distributing agents, also individually cases calling at the office for forms during that period we have filled.

R. X Int. 114. Do you sell directly to the said company?
A. We do.

432 (Redirect by Mr. DANE:)

R. D. Int. 115. -as the manufacture and sale of the dress forms made by you or your concern always been conducted in Brooklyn or within the immediate vicinity of New York since the time you first began the business as previously stated in your testimony?

A. The manufacturing has always been in Brooklyn. The sales have been carried on or conducted in New York city and Brooklyn. The general office has always been in New York or Brooklyn.

FRANCIS L. MANCHESTER.

Subscribed and sworn to before me this 8th day of September, A. D., 1888.

E. E. MARVIN,
Master pro hac vice.

WILLARD H. JOHNSON recalled by the defendants.

Examined by Mr. DANE, testifies as follows:

Int. 1. In the sale of dress forms while in the employ of Mr. Bristow, in Brooklyn, was there kept on sale together for any length of time, dress forms like the Hall and the Everett before you, one marked "Plaintiff's Complete Form," and the other a full form known as the Everett, with a bust, marked "Everett Complete Form"?

A. Yes, sir.

(The Everett form referred to is put in evidence, and marked "Everett's Complete Form.")

Int. 2. About what length of time were such forms kept on sale together, and in what place?

433 A. From the summer of 1884 to some time in 1886; at 296 Fulton street, and the latter part may have been in 294 Fulton street, Brooklyn.

Int. 3. While on sale in your store or stores, what advantage or preference was given to either one of the styles over the other?

(Objected to as incompetent, and also as leading. Question withdrawn.)

Int. 4. Which, if either of the two forms referred to in my previous question, sold the most readily?

A. The Everett.

Int. 5. State whether or not the two kinds of forms referred to, were handled and offered to the purchaser or customer in the same way, or whether preference was given to one that was not given to the other.

(Objected to as leading, ruled out and exception taken.)

Int. 6. How were the two kinds of forms presented to a customer?

A. First one was shown and then the other and as each one was shown the price was given.

Int. 7. Was there any urging done to induce a customer to take either one of the two kinds in preference to the other?

(Objected to as leading. Ruled out.)

Int. 8. At what price was the Hall complete form sold for (during the time referred to) by your house?

A. Six dollars and a half.

Int. 9. At what price was the Everett complete form sold for by your house during the same time?

A. Seven dollars and a half.

Int. 10. During the period referred to, of which of the two kinds of forms did your house sell the most and in what proportion to the other kind?

A. We sold the most of the Everett, about 15 Everett full forms to one of the Hall full forms.

434 Int. 11. At the prices previously named?

A. Yes, sir.

Int. 12. Were the two styles of forms offered and shown with equal attention?

(Objected to as leading, ruled out and exception taken.)

Int. 13. Did you give any advantage or preference to one that was not given to the other?

(Objected to as leading. Ruled out and exception taken.)

Int. 14. In selling the two styles of forms referred to, in what way were the sales usually effected?

A. The customer was taken to the forms and shown the different styles and after each form was shown they made their selection.

Adjourned to Monday, Sept. 10th, 1888, at 10 o'clock, a. m.

NEW YORK, *Sept. 10th*, 1888.

Accounting continued.

Parties present as heretofore.

(Cross-examination of the witness, JOHNSON, by Mr. TUCKER:)

X Int. 15. How long have you been in the employ of Mr. Bristow?

A. Since the winter of 1880—1881.

X Int. 16. What business does Mr. Bristow carry on?

A. He sells the Domestic sewing machine, embroidery goods, gives lessons in all kinds of fancy work and painting, sells

435 Domestic fashions, different kinds of fancy baskets, dress forms and skirt forms and gives lessons in embroidery and does stamping.

X Int. 17. How many persons sell goods in the store?

A. It depends altogether upon how busy we are. About ten.

X Int. 18. What are your duties?

A. Anything I am told to do by Mr. Bristow and look after his interest when he is out.

X Int. 19. What do you do?

A. See that the customers are waited on and if nobody is there to wait on them, wait on them myself; in fact, do everything that is needed.

X Int. 20. Do you do any work outside of the store, and if so, what?

A. At present attend to the sales of sewing machines.

X Int. 21. How long have you done that?

A. About two years.

X Int. 22. Did you do any outside work from the summer and from 1884 to the summer of 1886?

A. Yes, sir.

X Int. 23. What?

A. Sell sewing machines, and I did this whenever a customer wanted special attention on a sewing machine.

X Int. 24. How long would you be absent from the store at such times?

A. From 15 minutes to a half a day.

X Int. 25. Why did you have to go out when a customer required special attention. What did you do?

(Defendants' solicitor objects to the question as immaterial. Question admitted and exception taken.)

A. I or the one who waited on them could not sell the machine at the office, so I went to the house to sell the machines.

X Int. 26. That is, you went out to endeavor to complete sales which you or some other employee of Mr. Bristow had been trying to make, is that so?

(Same objection, ruling and exception.)

436 A. Yes, sir.

X Int. 27. And where employees had been canvassing for sewing machines you went out to try to close up sales which they had been trying to make and had not been effected.

(Same objection, ruling and exception.)

A. No, sir.

X Int. 28. Do you mean that you only went out where the negotiations were commenced in your store?

(Same objection, ruling and exception.)

A. As near as I can remember, yes, sir,

X Int. 29. A good many sewing machines were sold from that store, were there not?

(Same objection, ruling and exception.)

A. Quite a number.

X Int. 30. Did you do any other outside work at that time?

A. During the summer of 1884, I ran up to Saratoga, to look out for the branch there, about three times.

X Int. 31. Did you do any other outside work?

A. Not that I can recall.

X Int. 32. In the store the sales that you made, were principally of sewing machines, were they not?

A. No, sir.

X Int. 33. Whereabouts were the dress forms kept for sale in the store?

A. Both at the front and back of the store.

X Int. 34. Where were the Hall forms kept most of the time?

A. Wherever the others were.

X Int. 35. Were not the sales of dress forms principally made by saleswomen?

A. Yes, sir.

X Int. 36. And so far as you may have sold them, yourself,
437 personally, is it not a fact that you usually did so only when some saleswoman was absent or sick, or when all of them were so busy that they could not attend to a customer?

A. No.

X Int. 37. Well, what did you have to do with selling of them?

A. As a general thing the first one that got hold of a customer hung on to him.

X Int. 38. So far as you can judge what proportion of customers for dress forms did you get hold of first?

A. I do not know how to make an estimate of that.

X Int. 39. I understand you to say that the sales of dress forms were mostly made by saleswomen. Now, I want to know, as nearly as you can tell me what proportion of dress forms sold in that store during the period in question were sold by you personally?

A. I don't know.

X Int. 40. Can you not give me some idea?

A. No, sir.

X Int. 41. How many of the ten sellers were men or boys?

A. I don't suppose we had ten sellers in 1884. There was myself, and the rest were ladies, who were assigned to different counters.

X Int. 43. At or near what counters were the dress forms kept?

A. At the fashion counter, situated at the back of the store and by one of the front windows.

X Int. 44. Was Mr. Bristow in the store usually?

A. Generally, yes.

X Int. 45. Any other men there besides Mr. Bristow and yourself?

A. The lease clerk, one having charge of sewing-machine leases.

X Int. 46. Who looked after the leased machines?

A. The collectors.

X Int. 47. Who kept the books?

A. Mr. Bristow and the lease clerk.

X Int. 48. Did you buy the dress forms?

438 (Objected to as immaterial. Question admitted and exception taken.)

A. No, sir.

X Int. 49. Who did?

A. Mr. Bristow.

X Int. 50. How many Everett full forms were sold at that store during the period mentioned in your second answer?

A. Between 80 and 100.

X Int. 51. Do you state that number from memory or from the examination of the books?

A. By going over the bills with Mr. Bristow.

X Int. 52. How long or since what time have you kept the Everett full form on sale?

A. When I first went to Mr. Bristow's it was there on sale.

X Int. 53. When did Mr. Bristow first purchase the Hall full form?

A. In 1884.

X Int. 54. How many did he buy?

A. The first bill, I think, there was one full form in it.

X Int. 55. From whom did he purchase?

A. From the agent of them. I do not know what her name was.

X Int. 56. Was it Mrs. Lucy?

A. I do not know her name. I never was introduced to the lady.

X Int. 57. Did you not sell the Everett form for $8 apiece?

A. No, sir; not in Fulton street, Brooklyn.

X Int. 58. Did you sell them anywhere at that price?

A. I don't think so.

X Int. 59. You say that from an examination of the bills by Mr. Bristow and yourself you make the number of Everett full forms sold during a certain period from 80 to 100. Can you not tell more exactly?

A. No, sir.

X Int. 60. Why not?

A. I paid no attention to it after I found it surpassed 15 to one.

X Int. 61. Did you reckon up all the bills that you examined for that period?

439 A. Mr. Bristow did.

X Int. 62. Did you look at the bills yourself?

A. No, not to the items.

X Int. 63. Did you reckon them up yourself?

A. No, Mr. Bristow did.

X Int. 64. Then Mr. Bristow examined the bills and told you the result and your testimony here is based upon his statement, is it not?

A. Not entirely.

X Int. 65. Except from what he told you, are you able to state definitely, the proportion between the sales made in that store between the Hall full form and the Everett full form?

A. From personal observation, I should say there would be 20 Everetts to one Hall form sold.

X Int. 66. How many full dress forms did you sell during said period?

A. I don't know.

X Int. 67. Can you remember, as a matter of memory, apart from what Mr. Bristow has told you, how many full forms were sold during said period?

A. Somewhere between 80 and 100, that is of the Hall and Everett forms.

X Int. 68. What enables you to remember that this number of forms were sold?

A. By talking with Mr. Bristow.

X Int. 69. Before you talked with Mr. Bristow, did you remember how many forms were sold?

A. I never gave it a thought.

X Int. 70. What talk did you have with Mr. Bristow, to which you refer?

A. By telling him that they were trying to make out that the Hall full form was as good as the Everett, and by the way the customers used to talk when we showed them the Hall full form.

X Int. 71. How did this help you to remember how many full forms were sold?

A. We referred back to the bills.

X Int. 72. Before the bills were referred to, were you able to remember how many full forms were sold?

A. Not the actual number, but about the proportion.

440 X Int. 73. How many full forms did you sell of either style?

A. I don't know the actual number.

X Int. 74. Do you know how many any other sellers sold of either kind?

A. No, sir.

X Int. 75. Did you personally keep any memoranda of the numbers sold of either kind.

A. No, sir.

X Int. 76. How much of the time during the period referred to were you out of the store?

A. No more than I had to be.

X Int. 77. How much was that?

A. If I were to guess I would say very near a third.

X Int. 78. Is that your best estimate?

A. Yes.

(Redirect by Mr. DANE:)

R. D. Int. 79. From the investigation by yourself and Mr. Bristow in looking over the bills, etc., as stated and from your personal observation, have you any doubts about the proportion of the sales of the Everett full form being fully fifteen to one of the Hall full form?

(Objected to as leading, also as asking him to testify to what he infers from hearsay testimony, as it appears from the evidence of this witness already given that the supposed investigation was made by Mr. Bristow alone and only the results communicated by

Mr. Bristow to this witness. Question admitted and exception taken.)

A. No, sir.

WILLARD H. JOHNSON.

Subscribed and sworn to before me, this 10th day of September, A. D. 1888.

E. E. MARVIN,
Master, pro hac vice.

441 The defendants offer in evidence three exhibits marked—
"Complainant's Exhibit Defendants' Dress Form,"
"Defendants' Exhibit Latest-style Dress Form," and
"Complainant's Exhibit Defendants' Scale Waist *of* Band,"
as duplicates of exhibits marked as above and filed and used in the case of Charles A. Morss *vs.* Francis L. Manchester and another in the United States circuit court in and for the eastern district of New York, stating that he will prove that they are such duplicates hereafter.

It is agreed by the parties that the three exhibits may be marked by the master and they are marked by him as follows:

1. Manchester's Dress Form.
2. Manchester's Latest-style Dress Form.
3. Manchester's Scale Waist Band.

And that they may be received as testimony when proved to be duplicates as above stated.

It is further agreed that Mr. John E. Earle or some other competent expert on behalf of the defendants may compare the said supposed duplicates with the originals and make an unsigned written statement, under oath, of his opinion as to their identity and that such expert shall at some convenient time be submitted for cross-examination if plaintiff shall so desire which said statement shall be received as evidence in this case, subject to any objection by either party.

It is also agreed that the said expert may be interrogated by Mr. Dane concerning any similarity or dissimilarity that may exist between the said supposed duplicate forms and "Defendants' Form A," "Defendants' Form B," and "Defendants' Form C," subject to any objection that may be offered by or on the part of complainants' counsel hereafter, with the same right to cross-examine, as in the matter of comparison of said supposed duplicates with the original.

Adjourned to September 25th, 10 a. m.

442 NEW YORK, *September 18th*, 1888.

Evidence of Mr. John E. Earle, Pursuant to Stipulation.

Examined by Mr. DANE:

Int. 1. Mr. Earle, have you examined the several exhibits on file in the clerk's office, in the United States circuit court in and for the eastern district of New York, in the suit entitled Charles A. Morse

vs. Francis L. Manchester and John D. Richardson, in which dress forms were the subject of litigation, especially the exhibits said to have been the productions of the defendants therein, and against which the said suit was brought, and if yea, will you compare the exhibits in the causes in which you are now testifying said to be duplicates thereof, marked "Manchester's Dress Form," "Manchester's Latest-style Dress Form," "Manchester's Scale of Waist Band;" and tell the court whether such differ in any respect from the originals on file in the clerk's office of said circuit court, and if yea, in what way?

A. This morning I went to the clerk of the U. S. circuit court's office, eastern district of New York, in Brooklyn, taking with me the three exhibits in this case, and a printed copy of defendants' record, Morss *vs.* Manchester and Richardson for the identification of the exhibits in that case referred to in the question, and there examined the three exhibits in the Morss *vs.* Manchester and Richardson case, also referred to in the question, and compared the same with the said three exhibits in this case and I find the said three exhibits in this case marked respectively: Manchester Dress Form, Manchester's Latest-style Dress Form and Manchester's Scale of Waist Band, to be duplicates of the said three exhibits in the case of Morss *vs.* Manchester and Richardson correspondingly marked except as to the color of the Exhibit Manchester's Dress Form in this case, which is bronze, while the corresponding exhibit at the clerk's office was black.

Int. 2. Please point out the differences, if any exist, between the adjusting mechanism in the Manchester Dress Form and the Manchester Latest-style Dress Form?

443 A. Both the exhibits have a like central standard and in both exhibits, the ribs are diagonally arranged after the manner of "lazy tongs." Both forms are adjusted by means of two sets of braces extending from collars upon the central standard, the collars in both are substantially alike, but in the Exhibit Manchester's Dress Form, both collars are adjustable on the standard, each being provided with a set-screw, so that either may be moved and set independent of the other.

In the Exhibit Manchester's Latest-style Dress Form, the upper collar is stationary and inadjustable on the standard, but the lower collar is adjustable like the lower collar of the Manchester Dress Form. In both exhibits the braces are inclined upward and outward from their respective collars but their outer ends are brought together and hinged to their respective ribs alike in both forms. The only difference, then, between the adjusting devices, whereby the form is expanded and contracted, is in the fact that in the Manchester Dress Form, both collars are adjustable on the standard, whereas in the Latest-style Dress Form, the upper collar is stationary and the lower collar alone is adjustable. In the Manchester Dress Form the upper ends of the ribs are provided with hooks adapted to receive an adjustable metallic band to form the waist band. In the Latest-style Dress Form, the waist band is made in the form of "lazy tongs" so as to be readily expanded and con-

tracted, but these differences I do not understand, to be material to the adjusting devices.

Int. 3. Will you now compare the adjusting devices of the Exhibit Manchester Dress Form and Manchester's Latest-style Dress Form with the adjusting devices of the skirt portion of Exhibit Defendants' Form A, and state wherein they are alike or different.

A. In Defendants' Form A there is a central standard, having upon it two oppositely screw-threaded sections, on these two screw-threaded sections two correspondingly screw-threaded collars are arranged, which are adjustable toward and from each other by the rotation of the screw-threaded standard. The lower collar carries a set of braces extending therefrom and inclined downward are hinged to the ribs below the hip portion of the skirt. From the upper collar, similar ribs extend, inclined upward and hinged by
444 the outer ends to the waist-band portion of the form and so that by the rotation of the standard in one direction the two collars will separate and cause an expansion of the skirt portion of the form, then by a rotation of the standard in the opposite direction the collars will approach each other and produce a corresponding contraction of the skirt portion of the form. Comparing this form A with the Manchester Dress Form, there are in the two forms, two collars both adjustable on the standard, but, whereas, in the Manchester Dress Form, the two collars are supported only by their set-screw, the adjustment can only be made by reaching into the form to operate the set-screw and the collars will only remain stationary when the set-screws are applied.

In defendants' form the two collars are operated by means of the standard, which extend to a convenient point above the form and both collars and because of the screw-thread connection with the standard are always held in engagement with the standard.

In the Manchester Dress Form, the two sets of braces are brought together at the same point on the ribs, that is at the hip portion so that both sets of braces operate only at one point upon the ribs, to wit:—the hip portion. Whereas in Defendants' Form A, the lower set of ribs are applied to the lower portion of the skirt and the upper set of braces are applied at the waist band.

The ribs of the two forms are different, but this I do not understand to be material so far as the adjusting devices are concerned. Comparing now Defendants' Form A with the Manchester's Latest-style Dress Form, the differences are the same as between the said dress form A and the Manchester Dress Form, which I have pointed out, except, that in the Latest-style Dress Form, the upper collar is stationary and the lower collar adjustable. Whereas, in the form A, both collars are adjustable as I have described.

Int. 4. Please make the same comparison with reference to Defendants' Form B.

A. In Defendants' Form B, there is a central standard, screw-threaded, carrying a single collar like the lower collar of Exhibit A and with braces inclined downward, and hinged to the ribs
445 below the hip portion substantially as in Exhibit A. In Exhibit B the upper set of braces are hinged to the collar and

to the waist band like the braces in Exhibit A, but differs from Exhibit A in that the upper collar and its braces are adjusted independent of the lower collar.

The screw-thread which operates the upper collar being in the form of a screw-threaded sleeve around the standard and free to be rotated thereon independent of the rotation of the standard. The principal differences between Exhibit- A and B resides in the fact that the two sets of braces are independently adjustable in the form B, whereas, in the form A, both must be adjusted together.

Comparing Exhibit B with the Manchester Dress Form, both the collars which carry the two series of braces in both forms are independently adjusted on the standard, but there is the same difference between the adjustable devices of the Manchester Dress Form and Exhibit B as I have pointed out as existing between the Manchester Dress Form and Exhibit A, except as to the independent adjustment of the collars and their braces in Exhibit A.

I do not refer to the struts in the form B, upon which the upper braces work, as I do not understand that feature to be material in the comparison called for by the question; the peculiar support for the braces, I have already fully described in my testimony before the master. Comparing Exhibit B with the Latest-style Dress Form, except as to the adjustment of the stationary collar in the Latest-style Dress Form, the comparison which I have made between form B and Manchester's Dress Form describes the difference between the form B and the Latest-style Form, making the same comparison with form C, the two collars are independently adjustable by means of screws as in form B; but in form C the braces from the upper collar are inclined downward and are hinged to the ribs at the hip portion instead of to the waist band as in forms A and B. The lower collar and its braces are substantially the same as in Exhibits A and B; that is to say, the two sets of braces in Exhibit C are both inclined downward. In Exhibit C the upper braces are supported substantially the same as the upper braces in Exhibit C, except that in B they are supported from below, and in C they are supported from above.

446 In Exhibit C both collars are independently adjustable, as in the Manchester Dress Form, the only difference in this respect being the same as I have pointed out in reference to Exhibit Form B. In the Manchester Dress Form both sets of braces incline in the same direction—so do both sets of braces in Exhibit C; but in Exhibit C the point of connection of the respective sets of braces with the ribs are at different points of the form, whereas in the Manchester Dress Form the two sets of braces are brought together at the hip portion so that, whereas in Exhibit C as in B, each set of braces independently adjust the respective portions of the skirt, in the Manchester Dress Form the adjustment through the braces is made only at the hip portion.

Int. 5. Please compare the Exhibit Manchester Dress Form and Exhibit Manchester Latest-style Dress Form with the adjusting devices for the hip portion of the form described in the patent in suit, particularly set forth in the second claim thereof.

A. In the patent in suit as in the Exhibit Manchester's Dress Form there is a central standard, two collars arranged thereon in the hip portion of the form, both collars being adapted to slide up and down on the standard.

In the patent the collars are supported by rests on the standard respectively above and below the collars, (the rests are marked h^1, h^2) in the patent, instead of set-screws directly in the collars as in the Manchester Dress Form, and in the patent there is a set of braces hinged to each collar, the two sets extending from their respective collars are brought together at their outer ends and hinged to the ribs at the hip portion; but whereas in the patent the two sets of braces are oppositely inclined, in the Manchester Dress Form the two sets of braces are both inclined in the same direction. This difference, then, in the inclination of the braces, necessitates in the patent the band around outside the ribs to resist the tendency of the collars to approach each other and to produce a collapse of the form, as I have heretofore fully described.

In the Manchester Dress Form, because both sets of braces are inclined in the same direction, they support each other and the form, and avoid the necessity of the band required in the patent in suit. The difference, then, between the adjusting devices of the hip portion of the Manchester Dress Form and the corresponding
447 devices of the patent in suit, is that two sets of braces in the Manchester Dress Form are inclined in the same direction, instead of opposite directions as in the patent in suit; which difference omits, in the Manchester form, the band outside the ribs required in the patent in suit, and this further difference that the rests, particularly described in the claim as h^1, h^2 are absent from the Manchester Dress Form, the set-screws applied to the rests of the patent being applied directly to the collars in the Manchester Dress Form.

Making the same comparison with the Latest-style Dress Form with the exhibit, aside from the fact that the upper collar of the Latest-style Dress Form is stationary on the standard instead of movable, as in the patent and in the Manchester Dress Form, I find the same difference to exist between the adjusting devices of the hip portion of the Latest-style Dress Form and the corresponding device of the patent in suit that I have pointed out as existing between the Manchester Dress Form and the form in the patent.

JOHN E. EARLE.

CITY AND COUNTY OF NEW HAVEN, } ss:
District of Connecticut, }

Subscribed and sworn to before me this 20th day of September, A. D. 1888.

FRED. C. EARLE,
Notary Public.

448 Circuit Court of the United States, District of Connecticut.
In Equity.

CHARLES A. MORSS }
vs.
WM. H. KNAPP *et al.* }

Clinton Irving Hague of lawful age, being duly sworn deposes and says: I reside in the city of Brooklyn, New York, I am member of the firm "Knapp & Hague," doing business at No. 52 Fulton street, in the city of New York, dealers in wire cloth and other kindred articles; W. H. Knapp, one of the above defendants, is the senior member of the said firm "Knapp & Hague."

Owing to a supposed error of law in the decision of his honor Judge Colt in the case of Morss *vs.* Ufford *et al.*, in the district of Massachusetts, rendered during the present term of that court, and the discovery of new evidence, found since said opinion was filed, believed to be sufficient in itself to change the decision of the court, could such error and newly discovered evidence be brought to his honor's (Judge Colt) attention, I was requested to go to Boston on the part and behalf of Mr. W. H. Knapp and see Messrs. Ufford & Son, defendants in said Massachusetts suit, and induce them to petition the court for leave to be reheard on error of law in the said opinion before referred to and newly discovered evidence, which would, without doubt, justify the court in changing its decision. I visited said Samuel N. Ufford & Son at their store, No. 42 West street, Boston, on Friday, April 27th, 1888, arriving there about 10 o'clock in the morning, at which time and place I explained to him the importance of the rehearing to Mr. Knapp and the great injury that a refusal on his part to so petition the court would work upon said Knapp. Notwithstanding the careful explanation to him of the importance of the petition, said Samuel Ufford refused to petition or to take any action whatever in behalf of said W. H. Knapp *et al.*, saying, in substance:—"That he did not want
449 to sign it, because it might be the cause of incurring the enmity of Morss, the complainant, and otherwise damaging his business relations with him and refuse to supply him (Ufford) with skirt forms, as his firm is now (then) dealing with said Morss." Failing entirely, in my efforts to induce him to petition the court for a rehearing, or to secure his consent to anything that might afford relief to the defendant herein, I returned to New York and reported the facts to Mr. W. H. Knapp on his return, who was at the time absent in the South and did not return until the 3rd day of May the present instant.

CLINTON IRVING HAGUE.

Subscribed and sworn to before me this 11th day of May, 1888.

PATRICK DUNN,
[SEAL.] *Notary Public* (44), *N. Y. Co.*

Circuit Court of the United States, District of Connecticut. In Equity.

CHARLES A. MORSS
vs.
W. H. KNAPP *et al.*

Clinton I. Hague of lawful age, being duly sworn, deposes and says: I am the same Clinton I. Hague who made an affidavit in the suit of Charles A. Morss *vs.* W. H. Knapp *et al.* in this district, verified May 11th, 1888, before Patrick Dunn, notary public, in and for the county and State of New York, a true copy of which I attach hereto; the statements therein are true.

CLINTON I. HAGUE.

Subscribed and sworn to before me this 19th day of September, 1888.

PATRICK DUNN,
[SEAL.] *Notary Public* (44), *N. Y. Co.*

450 It is stipulated that Clinton I. Hague of Brooklyn, New York, will testify that he called upon Samuel Ufford (defendant in the suit of Morss *vs* Ufford *et al.*) at his office in Boston, Massachusetts, and asked him to petition the United States circuit court in the district of Massachusetts, for a reopening of the suit of Morss against him for the admission of newly discovered evidence and a rehearing on the case, which should be without cost and expense to him and that he refused to accede to the proposition.

Defendants put in evidence the following exhibits:
Shaw, 70631.
Everett, 202,713.
Kirkham, 180,517.
Robbins, 66632.
Franke, 167,393.
Franke, 167,394.
Ferris, 207,351.
Balch, 68831.
Wilson, 102,638.
Knapp, 387,563.
Knapp, 384,531.
Knapp, 383,470.
Knapp, 373,989.
Knapp, 373,988.
Knapp, 307,960.
Knapp, 288,452.
Morss-Manchester Opinion.
Morss-Manchester Record.

Defendants close.

THE LAW ASSOCIATION —OF— PHILADELPHIA.

451 NEW YORK, *Nov.* 13, 1888.

Accounting continued.

Parties represented as heretofore.

(Mr. EVERETT MORSS recalled and examined by Mr. PERKINS:)

Int. 1. Are you the Everett Morss who has previously testified in this case?

A. Yes.

Int. 2. Have you been present at the hearing for preliminary injunction in the case now pending between Charles A. Morss and the Domestic Sewing Machine Co., in the circuit court for district of Massachusetts, and at the hearing upon the motion to attach for contempt in that case?

(Defendants' solicitor objects to the question as immaterial and wholly improper on an accounting proceeding, as the question has no bearing whatever upon either profits or damages, and moves that the same be stricken out.

Complainant's solicitor states that the question is simply preliminary, that he proposes to show by the witness that exhibits offered in the two cases are similar. Question is admitted and exception taken.)

A. Yes, both hearings.

Int. 3. Are you familiar with the exhibits filed in the Domestic case, and the manner in which they have been marked?

(Same objection, ruling and exception.)

A. Yes.

Int. 4. Please state whether or not the exhibits in this case marked Complainant's Exhibit Defendants' Complete Dress Form is or is not a fac-simile of an exhibit filed in the said Domestic case; then, if it is, of which exhibit.

(Same objection as to Int. 2 and as leading and incompetent Question ruled out. Question withdrawn.)

452 Int. 5. Will you please compare the exhibits of defendants' dress forms filed in this case with the exhibits of defendants' forms filed in said Domestic case?

(Same objection as to Int. 2, and also as incompetent and inadmissible, as the witness is called upon to compare exhibits present with those not produced. Question admitted and exception taken.)

A. The exhibit in this case marked Defendants' Complete Dress Form is an exact fac-simile of the Exhibit Defendants' Dress Form in the Domestic case.

The exhibit in this case, marked Defendants' Form A, is an exact fac-simile of the exhibit in the Domestic case, marked Domestic Dress Form.

The exhibit in this case, marked Defendants' Form C, is an exact

fac-simile of the exhibit in the Domestic case marked Defendants' New-style Form.

The exhibit in this case, marked Defendants' Form B, is a fac-simile of the exhibit in the Domestic case marked Defendants' Latest-style Form, except that the Exhibit Defendants' Form B is a skirt form only, while the Exhibit Defendants' Latest-style Form is a complete form, that is to say, they differ from each other in the same way that the two exhibits in this case, marked respectively Defendants' Complete Dress Form and Defendants' Skirt Form, differ.

Int. 6. Will you please state a little more specifically what you mean by the last part of your last answer?

(Defendants' solicitor objects to the question as indefinite; admitted and exception taken.)

A. Defendants' Latest-style Form is a complete dress form which is made up of a skirt form exactly like Exhibit Defendants' Form B, to which a bust is added; or the Exhibit B is the Defendants' Latest-style Form with the bust left off.

(Cross-examination waived.)

EVERETT MORSS.

Subscribed and sworn to before me, this 13th day of November, 1888.

E. E. MARVIN,
Master pro hac vice.

453 (Mr. CHARLES A. MORSS recalled.)

Int. 1. When did you begin to manufacture the Hall form?

(Objected to as already answered; admitted and exception taken.)

A. 1881 or 1882. From memory I could not give the date.

Int. 2. At that time what dress forms were there on the market?

(Same objection, ruling and exception.)

A. The only one that I knew was called the Everett form.

Int. 3. How large was the sale of that Everett form?

A. I could not give the numbers, but I know it was very limited indeed—very small.

Int. 4. Please state whether or not the sale of dress forms has increased since the introduction of the Hall form, and if so, to what extent.

A. It has increased to a large extent; it has certainly grown a great deal. If you would like to have me give estimates, I should say that I should think you might safely multiply it by 60 or 70, yes, I should say to the best of my knowledge, 100 times as large.

Int. 5. What is the chief requisite of a household dress form?

A. Its properties of expansion and contraction to fit any and different-sized persons, and at the same time retain its proper shape.

Int. 6. Please state whether or not you find that requisite in either the Everett or Hall form.

A. Yes, sir; it is found in the Hall form, but not in the Everett.

Int. 7. Since you have been manufacturing the Hall form what have been your facilities of supplying the market with them?

A. I have had ample facilities to supply all the market called for, and more too. I could have doubled the production at any time if I had desired to.

Int. 8. Had you been called upon to furnish complete and skirt forms equal in number to all such of all kinds on the market, were or were not your facilities sufficient to have supplied this demand?

451 A. They were sufficient.

Int. 9. At all times?

A. Yes.

(Cross-examined by Mr. DANE:)

X Int. 10. What is the proper shape for a dress form?

A. I should suppose as near to the natural human form as possible; that is, a certain size about the waist and a certain size about the hips.

X Int. 11. What answer would you give to my last question applied to skirt forms?

A. I don't know how I could answer that any differently; the waist would be one size and the hips another.

X Int. 12. The waist, as used in your last answers, is the waist band, is it not?

A. Well, it is hard to say where the waist leaves off and the hips begins. There is a graduated size from the waist to the hips.

X Int. 13. The ordinary skirt form, without a bust, is without a waist, is it not?

A. It has what we call a waist size.

X Int. 14. And that is the waist band, is it not?

A. The figures are taken at the waist band, yes.

(The answer is objected to as irresponsive, and the question repeated.)

X Int. 15. And that is the waist band, is it not?

A. I don't know as I exactly understand; all I can say is, that it has a hip measure, a waist measure, and a skirt measure which are part and one of the same skirt.

X Int. 16. You say that the chief requisites of a household dress form are its properties of expansion and contraction to fit any and different-sized persons, and at the same time retain its proper shape. In view of your statement, I ask you to state what form with which you have any acquaintance is capable of fitting a person, either at the waist or hip, which may be nearly round in form circumferentially and of fitting another person not so round, but more flattened at the waist or hip.

A. I suppose when we talk about fitting a form, we mean to fit

a dress to the form, or to show them how to do so. I have
455 never been called upon to fit a form, but I have been called upon to fit a dress to a form. What I mean to say is, that a dress form is to fit a dress over, and for that purpose I have always said the Hall was the best and the Knapp perhaps the next best.

(The answer is objected to as irresponsive, and the question repeated.)

X Int. 17. X Int. 16 repeated and re-read.

A. I don't think I am capable of answering that question. I suppose that persons around the waist are the same general shape. My experience has never brought me in contact with any such case as that concerning which the question is put.

X Int. 18. Then, if I understand you correctly, any form adapted to support a dress, if capable of being expanded and contracted, either at the waist or hip, would be within the essential requirements of a household dress form. Is such the fact?

A. No, sir; I don't wish to say so at all. I have seen forms that you can expand, that is one or two ways, which would throw them out of shape, while we claim for the Hall that, while we expand or contract it, we retain the form desired.

X Int. 19. In what way would the form that was capable of expansion and contraction, to which you have referred, be "out of shape"?

A. For the reason that it would expand in one way and not in another correspondingly.

X Int. 20. Do you mean to say that it is necessary that each rib of a dress form should move to and from its central support uniformly, each retaining the same circumferential distance from such central standard or support?

A. I mean to say that there is no dress form made, that I have ever seen, that will follow all the irregularities or deformities of the human frame, but there are those which will follow the general outline for which in a commercial sense we work.

(The answer is objected to as irresponsive, and question repeated.)

X Int. 21. X Int. 20 repeated and read.

A. No; I don't say each individual rib shall follow.

X Int. 22. What proportion of them should follow?

456 A. I should say that if they followed in quarters it was just as good as if they followed in ten different parts. I use those numbers because the Hall form has ten ribs and the Knapp form four.

X Int. 23. Then you find that four ribs are just as good as ten ribs in a dress form?

A. Well, I don't say so; I don't know.

X Int. 24. If four ribs composed a skirt form, and they should be expanded outwardly six inches from the smallest diameter, the effect would be to form corners of a square, would they not?

A. I should say, decidedly, it would depend on what the form of

those ribs were. If they were four equal parts of a circle, I don't think they would.

X Int. 25. When expanded in the manner indicated in the last question, and a string drawn taut around the hips or waist band, would represent a square with rounded corners, would it not?

A. I don't think I can answer that, really.

X Int. 26. It would not describe a perfect circle, under the circumstances indicated in my previous question?

A. Literally not, but as applied to a dress form yes; that is my opinion, but I am not an expert.

X Int. 27. Then you admit that a perfectly round form is not necessary in a dress form?

A. It would seem to me that it would depend a great deal upon how much it was out of round that it might be not perfectly round and still so nearly round as to be useful as a dress form.

X Int. 28. Then you admit that it may be more or less out of round; in other words, somewhat flattened, instead of a true circle?

A. I think a round would be better, but I think that it might answer the purpose if it was out of round to a small extent.

X Int. 29. To what extent?

A. I do not know how to answer that; I am sure I don't know.

X Int. 30. Do you manufacture dress forms other than those under the Hall patent?

457 A. No; I never have manufactured and sold other forms. I have been experimenting all the time. I suppose you mean by manufacturing, manufacturing and selling, and I say no.

X Int. 31. What part of the form business did you have charge of, either in the shop, office or otherwise, during the years 1882, 1883 and 1884?

A. I had the selling and the financial part; I don't know, but I suppose that anything that is done in my store. Well, you might say, the selling and financial part.

X Int. 32. Did your selling consist of wholesale and retail, conducted by yourself personally?

A. Under my personal order; yes, sir.

X Int. 33. But not by yourself personally?

A. I think it would be an absurdity to say that I sold every individual form myself, but it was done as all other business was done, under my orders.

X Int. 34. Your sales are conducted principally by canvassing and advertising. Is such the fact?

A. To a large extent, yes.

X Int. 35. To what an extent otherwise, and how conducted, and whether such system is now and has been heretofore under your own personal supervision?

A. It is less under my actual personal supervision, because the extent is more?

(The answer is objected to by defendants' solicitor, and the question repeated.)

X Int. 36. X Int. 35 repeated and read.

A. The business is so large, now, I cannot give the same personal attention that is done by responsible agents accountable to me.

X Int. 37. Question repeated again.

A. I cannot understand any other way of doing business than by advertising and keeping it before the people, and through agents and such methods.

X Int. 38. Your last statement is the best answer that you can give to my previous question. Is such the fact?

A. Yes, sir.

X Int. 39. To what extent was you personally familiar with the market for dress forms prior to January, 1887?

458 A. To a large extent.

X Int. 40. To what extent in the city of New York and in the city of Philadelphia; stating in what way you became personally familiar with the market for dress forms in the places referred to?

A. At that time I was largely interested in the manufacture of dress forms. I suppose I made several times more than all the other makers put together. I knew how many I shipped to New York, and I knew how many the Union Form Co. said they made. I knew where they made them in Connecticut, and their principal market was in New York.

(The answer is objected to as irresponsive, and question repeated.)

X Int. 41. X Int. 40 repeated and read.

A. Because I knew how many I shipped to places.

X Int. 42. And this is the best answer you can make to the question?

A. Yes, sir.

X Int. 43. To what extent, of your own personal knowledge, were Everett forms made and sold prior to 1884, and to what extent prior to 1889?

A. To my personal knowledge I knew but little about the Everett form. I could give no figures.

X Int. 44. What were your prices for your skirt forms per dozen, and what for the full forms of your manufacture under the Hall patent in the year 1886?

A. The retail price of the full figure was $6.50; skirt, iron post, $3.50; skirt, wood post, $3. The wholesale price, complete figure, was $4.50; wholesale price of the iron-post skirt, $2.50; wholesale price of the wood-post skirt was $2.

These are the prices at which they were sold to the trade, but some special agents had a discount from those prices.

X Int. 45. To what special agents did you give prices under these quoted in your last answer, and at the same time state the lowest price or prices per dozen at which such were sold?

A. The numbers were very few who had them at prices lower than that. The Hall Bazaar Form Co. was one, a party in Cali-

459 fornia, and Mr. Ufford who went to Chicago and located there at considerable expenses, and Mr. E. F. Bowen of Rhode Island, was another one. I think that is all.

The price to these persons was the wholesale price with 25 per cent. off; that is, for the full figure, $54; skirts, iron posts, $30; skirts, wood posts, $24.

X Int. 46. Do I understand that you gave or allowed 25 per cent. off from the prices specified in your last answer, for the whole dress forms?

A. Yes, to these parties named.

X Int. 47. And to no others?

A. Yes, sir; I can think of no others.

X Int. 48. But you think of no others?

A. Literally none. I might give a form away, but practically no sales.

CHARLES A. MORSS.

Subscribed and sworn to before me, this 13th day of November, A. D. 1888.

E. E. MARVIN,
Master pro hac vice.

NEW YORK, *Nov.* 14, 1888.

Accounting continued.

Parties present as heretofore.

Complainant's solicitor puts in evidence a certified copy of all the affidavits filed on motion for preliminary injunction, rescript, decree and injunction in the case of Morss *vs.* Domestic Sewing Machine Co., pending in U. S. circuit court, district of Massachusetts; also, certified copy of W. H. Knapp's affidavit on motion for attachment for contempt, in same case, filed Sept. 24, 1888, the two latter papers being already on file in court in this case, on motion for attachment for contempt, and being already in the hands of the master, as clerk of court.

(Defendants' solicitor objects to the admission of each and every of the several papers offered as wholly immaterial, not only
460 in these accounting proceedings before the master and committee, but also immaterial to any questions that may hereafter arise or to be discussed either before the master and committee, or the court, in any pending proceedings before them, which papers are evidently produced at this time for the purpose of urging upon the master and court to follow the proceedings and decree in another court not based upon any final hearing, and particularly in view of the fact that the decree referred to was filed before defendants received a copy upon which to prepare his objection, which fact has been previously stated and appears in the printed record on this accounting, and for the reasons stated motion is made to dismiss and not receive said papers so offered by complainant's solicitor. Papers admitted and exception taken.

Complainant's solicitor gives defendants' solicitor notice that if final decision is reached in the case of Morss *vs.* Domestic Sewing Machine Co., already referred to, before this case is argued, he shall move to reopen the case to add such decision to the evidence.

Complainant's solicitor objects to the affidavit of Clinton I. Hague,

offered in his hearing and authenticated Sept. 19, 1888, before P. H. Dunn, N. P., as incompetent and immaterial.

Complainant's solicitor objects to the Morss *vs.* Manchester record filed herein, except so far as to identify the forms used as exhibits complained of in that case, as immaterial and incompetent.

Complainant's solicitor objects to the Knapp patents offered by the defendants in this case, and named on page 267 of the printed record, as immaterial and incompetent. The master admits the evidence objected to, and exception is taken.)

Complainant's Rebuttal.

(Mr. C. A. MORSS recalled.)

Int. 1. Have you read the testimony of Francis L. Manchester in this case?

461 A. Yes, sir.

Int. 2. What in your opinion enables a salesman or saleswoman to sell one style of dress form in preference to another?

(Defendants' solicitor objects to the question and to any answer that may be given concerning the matters inquired about as incompetent. Question admitted and exception taken.)

A. I should suppose the qualities which it had for the purpose for which it was designed.

Int. 3. If one form is very much superior to another in regard to adjustability, will or not the "gift of gab" of the salesman enable him to sell the inferior form over the superior? I mean at retail.

A. I do not know but in an individual case a salesman of a particular gift of gab, if you are a mind to call it so, might occasionally sell an inferior article, but as a rule he could not.

Int. 4. What, in your judgment, would influence dealers in selecting dress forms for their trade?

(Defendants' solicitor objects to the question as calling for opinions and not facts and as, therefore, incompetent and inadmissible. Question withdrawn.)

Int. 5. What, in your experience, influences a dealer in selecting dress forms for his trade?

A. My experience would be that the same rule would apply that governs every other business, and that they would buy the article the best adapted for the purpose and the one they could sell the most readily.

Int. 7. Please examine the Exhibit Wilson Form, and state whether such a form has ever been upon the market, so far as you know.

A. So far as I know, it never has. I have never known of one being offered for sale or sold.

Int. 8. What value, in your opinion, has it for a dress form? Please state your reasons for any opinion you may express.

(Defendants' solicitor objects to the question as incompetent; admitted and exception taken.)

A. I don't think it has any value as a dress form at all, to
462 sell. I think I could go into my shop and pick up a wire reel, which I should about as soon use for that purpose, as to use that. I don't think it has any of the qualities of other dress forms on the market, and it would be impossible to sell it for that purpose in competition with them.

Int. 9. Please compare said Wilson form with the exhibits in this case, Plaintiff's Exhibit Skirt Form, Plaintiff's Exhibit Defendants' Skirt Form and Defendants' Forms B and C, and state the advantages and disadvantages, if any, of the Wilson form in comparison with said exhibits.

(Same objection, ruling and exception as to last question.)

A. I should say that in a comparison of all the forms named other than the Wilson, that all the others besides the Wilson opened and contracted and retained the desired shape; that the Wilson form had none of these qualities, and is an awkward and unsaleable article.

Int. 10. Have you read the testimony of Wm. H. Knapp in this case, of Aug. 28, 1888, beginning on page 202 of the printed record?

A. Yes, I have read that.

Int. 11. To what, in your opinion, are the profits made by said Knapp or the Union Form Co. on the forms made by them, due?

(Objected to as incompetent and as calling for opinions instead of facts. Question admitted and exception taken.)

A. Because it had the requisites of a good form. It opened and contracted and retained its symmetry and shape.

Int. 12. What proportion of said profits, if any, are due to the fact that the Knapp forms are adjusted from one point, namely, from the top of figure?

(Same objection, ruling and exception.)

A. Very little, indeed. I think its value is principally due to the braces, which hold it in shape.

Int. 13. Suppose a form were made having the arrangement at the top of the figure, which Knapp has in his figures, but
463 so made that it could not be adjusted so as to retain its symmetry and shape; what value, in your opinion, would the form have?

(Same objection, ruling and exception.)

A. I can't see that it would have much value, merely from the adjustment, whether it was from the top or bottom, unless it had something valuable to adjust.

Int. 14. In what way, if any, do you think the adjusting apparatus of the Knapp's is desirable or advantageous?

A. It is a slow process, and I do not think it of any great value.

(Cross-examined by Mr. DANE:)

X Int. 15. Have you ever personally acted as a salesman in any store where dress forms were displayed and operated with, by you, in showing up their qualities to those wishing to buy, and if yea, where and to what extent?

A. I have sold them in my own store largely, both at wholesale and retail, personally; I mean the Hall form. I have never sold others, but I have had them and compared them and attempted to show the superiority of the Hall, of course, as I was selling the Hall.

X Int. 16. For what length of time—how many years—were you engaged in selling the Hall forms, at retail and showing or displaying their qualities to the purchaser?

A. From 1881 to 1887.

X Int. 17. What time in 1881 did you begin?

A. I could not tell without referring to my books to know, at what time I made the trade with Mr. Hall.

X Int. 18. You did not begin to display and retail until after the trade with Mr. Hall?

A. No, sir.

X Int. 19. Why is the Wilson form an awkward and unsalable article?

A. That it is an awkward thing, I think it will speak for itself. Why it is unsalable, is because it has not the desired shape, and cannot be adjusted into the desired shape.

X Int. 20. Please answer more definitely the first clause of my last question.

464 A. It is a hard question to answer why it is awkward. You might take a flour barrel and ask me why it was awkward for a dress form, and it might be a pretty hard question for me to answer, and still the fact would remain that it would be awkward for such a purpose, and I consider this a parallel case.

X Int. 21. You fully understand the structure described in the Hall patent on which this suit is based, do you not?

A. I am not a lawyer and I do not understand the technical parts of the law. I submitted the patents to my lawyer, and I acted under his guidance in that matter. Yes; I understand the dress form described in the patent.

X Int. 22. And that form is provided with a series of ribs surrounding a central staff or support and supported by the latter. Is not such the fact?

(Complainant's solicitor objects to the question as relating to a subject not inquired of in the direct examination. Question ruled out and exception taken.)

X Int. 23. The Wilson form is provided with a series of ribs surrounding and supported by a central post. Is not such the fact?

A. While it has a post and what you may call ribs, I deny that it has any of the requisites of a dress form in any commercial sense of the word, and in my opinion, it has never been and cannot be sold in the market.

X Int. 24. I am not calling for your "opinions," neither am I calling for "requisites;" but I am calling for facts, and I therefore repeat my question and ask you to answer it. X Int. 23 repeated and read.

A. Which do you call the ribs?

(Defendants' solicitor states the parts like or similar to the corresponding parts in the Hall patent.

Complainant's solicitor objects to the modification as attempted by counsel, as it practically asks for a comparison of certain parts of the Wilson form with parts of the patent, and insists defendants' counsel shall point out the parts on the Wilson form to which he refers in his question; for that reason the question is objected to as it now stands. Question allowed.)

A. I don't know.

465 (Examination of Mr. Morss temporarily suspended.)

Mr. CALVIN M. CRAM, a witness for complainant, sworn and examined by Mr. PERKINS:

Int. 1. What is your name, age, residence and occupation?

A. Calvin M. Cram; age, 43; reside in New York city; am connected with the Fowler Manufacturing Co., Limited, being its president; the business of the company is manufacturers of spring beds and dealers in household specialties.

Int. 2. What experience, if any, have you had in the introduction and sale of dress forms?

A. Our company has been engaged in the sale of the Diamond dress form for upwards of the past two years; such sales under my direct management.

Int. 3. In what relation to the manufacturers of the Diamond form has your company stood for the last two years?

A. We have marketed the entire product of the Diamond form.

Int. 4. Have you personally and actively attended to this branch of the business of your company?

A. I have.

Int. 5. What acquaintance have you, if any, with the dress-form trade and its requirements?

A. I have a general knowledge of the same, such as one would acquire with being actively engaged in the business.

Int. 6. What, in your experience, are the essential requisites of a dress form, as a household article?

A. A form approaching nature's figure as near as may be; involving features of adjustment, readily obtained without change in its general confirmation, and embracing within a given form a range of adjustment adapted to that of a child or an adult.

Int. 7. What dress forms in the market, which you have met, in the past two years, possess the adjustment to the size of a child or an adult without change of contour or shape?

A. The Hall, the Diamond and Knapp forms.

Int. 8. To what extent, if any, have you found forms like the Wilson form, in the market for the last two years?

A. I have not known of its presence in the market.

Int. 9. Not by hearsay or otherwise?

466 (Objected to as leading. Complainant's solicitor withdraws the question.)

Int. 10. What do you mean by the words in your last answer—"I have not known of it"?

A. I mean that I have never heard of, nor seen such a form.

Int. 11. Will you please compare the Exhibit Wilson Form with the Hall, Knapp and Diamond forms, with reference to the requirements of a dress form, which you have before stated?

(Objected to by defendants' solicitor, as indefinite and incompetent. Question admitted and exception taken.)

A. I do not think the Wilson form before me, Defendants' Exhibit Wilson Form, embraces the requisites of a dress form previously named by me.

Int. 12. Why not?

A. Because it bears very remote resemblance to nature and may be adjusted so far as the waist is concerned in one direction only and the adjustment at the waist changes the figure at that point, or rather the general contour of the frame-work changes its shape by adjustment from that of the perpendicular to the general shape of a cone. Its shape at the top, or at its connection with the waist, remaining substantially the same, while below it is flared while being adjusted for increase of diameter, its greatest diameter being at the bottom of the frame, while with the Hall, Knapp & Diamond forms the general shape of the figure, or the figures are not changed by being adjusted to varying sizes, but are simply enlarged or decreased within their general lines.

Int. 13. If you are acquainted with the Everett form, so called, please state whether or not it contains the principal requisite of a dress form.

A. I think the Everett form or the Peerless, the name under which I have known it, involves the requisites named in some particulars, in a remote degree. It is adjusted sectionally or in halves, which necessitates an aperture between the section at which point the garment is flattened or thrown out of shape, provided the form is adjusted for enlargement and such a form does not embrace
467 within a given form a range of adjustment adapted to the use of a child or of an adult and to that extent its general usefulness in the household is impaired unless several such forms are used.

Int. 14. What has been the extent of the competition between the Everett form and those embracing the principal requisites during the past two years, so far as you have experienced it?

(Defendants' solicitor objected to the question as not calling for evidence in rebuttal of any evidence given on the part of the de-

fendants, but calling for evidence which should have been produced before complainants closed their main case. Question withdrawn.)

Int. 15. What in your experience are the comparative merits of the means of adjustment of the Knapp form, that is to say through the agency of the knob at the top and the means employed by the Diamond & Hall?

A. My experience has been that the means of adjustment referred to in the Knapp are inferior to those employed in the Hall and the Diamond. The device of the Knapp as a means to an end involves some special mechanism requiring instruction, while in the Hall and Diamond the means for adjustment are very simple and apparent to any one.

Int. 16. Upon what experience do you base the comparison made in your last answer?

A. In that it has *has* been no competitor with the Diamond.

Int. 14. Do you mean by your last answer that they have not met as competitors or have not succeeded as such?

(Objected to as leading; question withdrawn.)

Int. 17. What do you mean by your last answer?

A. I mean that in the earlier stages of my connection with the business that, while we met the Knapp to a limited extent in competition with the Diamond, the Knapp was not a successful competitor. For some time past I am not aware of the two forms having met in competition; the trade of the Diamond having been confined almost exclusively to the dry-goods trade and to our retail trade, while we have understood the avenue of sale for the
468 Knapp has been very largely through the bazaar concerns, so called; so that the presence of the Knapp form has not been regarded by us as directly in competition with us.

Int. 18. What expressions of the trade have you heard, if any, concerning the comparative merits of the means of operating the adjusting devices of the Diamond and Knapp forms?

A. The best expression, perhaps, has been evinced by our almost always superseding them, to the exclusion among customers, who at one time carried the Knapp form in stock.

Int. 19. To what extent, if any, have you sold the Diamond form through the bazaar or paper-fashion trade?

A. Not any. We have never solicited that trade, with the exception of one instance only.

Int. 20. Did you then succeed in selling?

A. We did not.

Int. 21. What is the relative importance of the features of a dress form which adapt it to all sizes without change of shape; that is, those features that always preserve symmetry, whether the form is adjusted for a child or a large woman, and those features which constitute the means of operating the adjusting parts of a dress form? If I do not make myself perfectly understood, please indicate in what particular.

A. The question is not clear to me in its length. The features of

a dress form adapted to all sizes, without change of shape, is of greater importance than any means employed to effect that end.

Int. 22. Suppose the best means to that end were applied to the Wilson, and the most inferior means were applied to the Hall, Diamond or Knapp, what would be the comparative commercial value of the two forms? I assume in this question that the Wilson could be adjusted at the top by a similar knob to the one used by the Knapp.

A. The commercial value of the Hall, Diamond or Knapp, in my opinion, would far exceed that of the Wilson, made as the question assumes.

Int. 23. Would the Wilson form be of any commercial value, under such circumstances, as a dress form?

A. Not in my opinion.

Int. 24. How much value would be added, if any, to the Wil-
469 son form as a dress form, by substituting some adjusting mechanism at the top, such as the Knapp, in lieu of pulling it apart by hand, as now arranged?

A. I do not regard the Wilson form, as shown in the exhibit, of any practical value; nor do I see how that value would be enhanced by the adoption of the device suggested.

Int. 25. Please look at your answer to Int. 13, and state what you mean by the words "several such forms"?

A. I mean that the varying sizes of the persons in the household, from the young miss up to the adult, would have to be severally supplied with a form of this character, of the size adapted to the form of the person for which it was to be used.

Int. 26. You mean, do you, that it would be necessary to have forms of different sizes?

A. I do.

Int. 27. What did you mean by sales at retail, in your own trade?

A. We have branch stores established in a number of different cities, in which we market our goods, including the Diamond form, at retail. We also sell at retail in our principal place of business in New York city.

Adjourned to Nov. 15, 1888, 10 a. m.

NEW YORK, *Nov. 16th*, 1888.

(Cross-examination of Mr. CRAM by Mr. DANE:)

X Int. 28. State, if you please, the exact date when you first commenced the manufacture or sale of the Diamond dress form.

A. We have never been engaged in the manufacture of the form. We first became engaged in the sale of the form in the month of September, 1886, I think, possibly in the month of August of that year.

X Int. 29. What forms, if any, had you sold or dealt in prior to September, 1886?

A. Not any.

X Int. 30. What acquaintance, if any, had you with dress forms of any kind prior to September, 1886?

470 A. I had become interested in dress forms shortly prior to that date, but had no further acquaintance with them other than that involved in looking around and ascertaining what forms were being made, preliminary to engaging in the sale of the Diamond. I had never bought and sold any dress forms prior to that time.

X Int. 31. State when first you commenced to look around, where you went, what places you visited where dress forms were kept or made, and the kinds that you saw, and by whom made, if you know?

A. I am unable to reply with accuracy as to dates, but my impression is either in the spring of 1886 or the preceding winter. The first place that I recall as having seen dress forms on sale which interested me for examination, was on West 42d street, near 6th avenue, at the store of a Mr. Drandt, or some similar name, who was succeeded in the same place by a Mr. Kenneth, I think. This was the first occasion where I made an examination, other than the forms in use in families. Subsequent to that time I observed them on sale at various places on the avenues and later the Diamond form came under my observation and commending itself to me I sought out the party making it. I do not now recall as to whether it was the Hall or the Knapp form which I examined on the occasion referred to in West 42d street; I think, however, that both of the forms came under my observation at the other places where they were exposed for sale before referred to.

X Int. 32. Then if I understand you the only place that you can recollect of visiting for the inspection of dress forms prior to September, 1886, was the one which you think was on 42d street. Am I correct?

A. You are not. I did not state that I thought I saw the forms referred to on 42d street, but that I did see them there; I also stated that I visited the maker of the Diamond form during that period.

X Int. 33. But you have been asked concerning the several places and have only named 42d street. Now I ask you to state where the office, store or factory, that you visited to see the maker of the Diamond form was.

A. At 16 High street, Brooklyn.

471 X Int. 34. And the two places mentioned are the only two places that you visited prior to September, 1866, that is to familiarize yourself with dress forms or to inspect or to consult about them?

A. No. Being interested in them I took occasion to stop and observe and inspect such forms as I saw exposed for sale, generally.

X Int. 35. Then you have not stated in your previous answers the several places visited by you for the inspection of forms prior to September, 1886?

A. No.

X Int. 36. Now I ask you again to state each place visited by you prior to September, 1886, when you inspected dress forms?

A. I am unable to respond to your line of inquiry any more completely than I have, for I do not recall any particular place other than those named, but I did see, as stated, the form exposed frequently,

for sale on the avenues and I did examine and observe such forms, as at that time I was interested to see what there was in the market of that character.

X Int. 37. Did you call upon any of the manufacturers of dress forms prior to September, 1886, other than that of the Diamond, and if yea, who?

A. I did not.

X Int. 38. You were desirous, were you not, of handling the best dress form known to you. Am I correct?

A. Not during the entire period referred to. A portion of the time while interested, I was debating within myself as to the advisability of doing anything in that line; finally when the Diamond came under my observation I was sufficiently interested to seek out the manufacturer and see what I could do with him.

X Int. 39. The result of your observation and investigation justified you in making a contract with the manufacturer of the Diamond, whereby you might have substantially the exclusive handling of such forms. Am I correct?

A. We did not make a contract with the maker of the Diamond form until we had first tested the merit of the form in the way of sales. In the month of October—in the latter part of October, 1886, we did make such a contract.

472 X Int. 40. Is that contract in force to-day?

A. It is not.

X Int. 41. When did that contract end?

A. It terminated May, 1887, I think.

X Int. 42. Have you handled their goods to any extent since May, 1887?

A. We have; their entire product down to the early part of this month, under another contract entered into in May, 1887.

X Int. 43. And the contract entered into by and between yourself or your company and the makers of the Diamond form was terminated, or substantially terminated, within a few weeks, was it not?

A. It was.

X Int. 44. And subsequent to the termination last referred to, or about the time of such termination, you had an understanding with or entered into another contract with other parties than those referred to in the two previous contracts concerning the sale of dress forms. Am I in error?

A. You are not.

X Int. 45. And you had such understanding within the last five weeks. Am I correct?

A. Yes, within, but not during the last five weeks; that is, we had no such understanding five weeks ago.

X Int. 46. And the new deal or understanding concerning the sale of dress forms, was between yourself or your company and Mr. C. A. Morss, the complainant in this case, either directly or indirectly. Was not such the fact?

A. Yes, sir.

X Int. 47. And in such contract or understanding had with Morss it was agreed that you should be allowed to handle certain kinds of

dress forms and among others, the Diamond for a certain period more or less in the future. Am I correct?

A. You are.

X Int. 48. You understood, did you not, that his honor, Judge Benedict, in the U. S. circuit court for E. D. of N. Y., decided on final hearing in the case of Morss *v.* Manchester that the Diamond form did not infringe complainant's patent?

A. I did.

X Int. 49. You also knew or understood that an appeal
473 had been taken from said decision to the Supreme Court of the United States?

A. I did.

X Int. 50. You also knew or understood that subsequent to such appeal that the complainant, Morss, had secured or bought the patents under which the Diamond forms were made?

A. I did.

(Cross-examination continued by Mr. BEACH:)

X Int. 51. In order to make it clear just how thoroughly you investigated the subject of dress forms prior to September, 1886, or whenever it was you began to negotiate with the Le Moine Manufacturing Co., I will ask you if you can relate the substance of the conversation you had relating to dress forms at the time you visited the 42d-street place?

A. I do not wish to be understood that my investigation, prior to first visiting the Le Moine Manufacturing Co., was in any sense exhaustive. In regard to my visit to the 42d-street store I do not recall the conversation, yet I do remember that the substance of it was respecting to the forms selling freely or otherwise. I was acquainted with the party and sought such information.

X Int. 52. As I now understand, you do not lay claim to any special knowledge as to the comparative merits of dress forms which was acquired earlier than September, 1886, or thereabouts?

A. Your understanding is correct.

X Int. 53. I notice that in stating the essential requirements of dress forms you have not said anything about the portability or the capacity to fold up into a small compass. Is that a practical commercial advantage?

A. I so regard it. It is an important feature in my opinion.

X Int. 54. It was a feature possessed by the Diamond dress form, was it not?

A. It was.

X Int. 55. You have stated that the Diamond dress form in some cases superseded the Knapp form in the market; were those instances solitary cases, or was there any general drift that way?

A. We seldom meet them in competition, for the reason
474 previously assigned, that their line of sale was understood to be mainly through the bazaar concerns, while our wholesale trade was with the dry-goods houses. The Diamond, however, has met the Knapp in the dry-goods trade, particularly in this city, and

in certain instances it has given place to the Diamond form in large houses; from which I have gathered that, so far as the dry-goods trade was concerned, the drift was away from the Knapp and to the Diamond.

In fact, for the past year or more, I have had little regard for the presence or absence in the market of the Knapp or Domestic form, so far as our trade was concerned.

Where I referred, in my testimony to the Knapp, I would add the Domestic, as I think I have heard more from it as the Domestic than the Knapp.

X Int. 56. At what period did you first observe the drift away from the Knapp and towards the Diamond?

A. During the first year of our being engaged in the business.

X Int. 57. That was from the fall of 1886 to the fall of 1887?

A. Yes.

X Int. 58. Prior to the fall of 1886, you have no personal knowledge of the trade relations between the Knapp or Domestic and the Diamond form; have you?

A. No, sir.

X Int. 59. Is it your opinion that the feature of portability, or capacity of folding into a small space, had anything to do with the drift away from the Knapp form to the Diamond?

A. I think it is a factor in favor of the Diamond, in reference to all forms of which I have knowledge, and was a feature in favor of the Diamond in reference to the Knapp, in the drift referred to.

X Int. 60. So far as the mere capacity to contract and *and* expand symmetrically is concerned, irrespective of the mechanism for accomplishing such contractions and expansions, was the Diamond form as good as the Knapp form?

A. It was.

X Int. 61. I understand that the Diamond form had a graduated band, or bands, at the waist. Is that right?

A. It hadn't a so-called graduated band at the time we took
475 hold of it, but it had a waist band of open work, capable of graduation, at that time.

X Int. 62. You have stated that it was understood that the line of sale of the Knapp or Domestic form was mainly through the bazaar concerns. Do you mean that this was any understanding between the respective parties in interest, that the Knapp should be sold through bazaar concerns and the Diamond through dry-goods houses?

A. Not at all.

X Int. 63. Has your business been that of a wholesale dealer in forms or that of a retail dealer, or both?

A. Both.

X Int. 64. To what extent have you retailed and at what places?

A. At our principal place of business, 548 and 550 West 23d street, New York, and at our branches in this city and I think at all of our branches outside of this city. If I enumerate all of our branches outside of this city, I might possibly name some that had not made retail sales. Our branches in this city at which we have

been and are now selling the Diamond form are at 199 E. Houston street, and 286 2d avenue.

X Int. 65. How far do your duties, as president of the Fowler Manufacturing Co., require you to give personal attention to the retail trade in dress forms?

A. I determine where they shall be so sold.

X Int. 66. What proportion of your trade in dress forms has been taken by the retail business of your own company?

A. About 20 to 25 per cent.

X Int. 67. And about what proportion does the total dress-form trade bear to the total business of your company?

A. I am unable to answer that, never having computed it with regard to the whole volume of business done by our company. We handle quite a line of articles, any one of which I am unable to give the volume of, with reference to the whole; I can, however, state the amount of our sales of the Diamond form. The proportion of the dress-form business with reference to our whole business is not in volume equal to several other articles which we handle.

476 X Int. 68. What has been your personal attitude towards the wholesale trade in dress forms conducted by your company?

A. I have cultivated it.

X Int. 69. What means did you take for bringing it to the attention of wholesale customers?

A. Personally, through salesmen, correspondence and circulars.

X Int. 70. Do you recollect whether, in any of these circulars, you compared the Diamond form with any other form in market?

A. We made no direct reference to any other form, but laid claim that the Diamond was the best form made, or to that effect.

X Int. 71. And you made that claim personally and by letter?

A. I think I have done so frequently.

X Int. 72. Do you remember ever comparing the details of the Diamond form with the details of any other form, for the purpose of convincing the customer of the merits of the Diamond?

A. I do not recall such an instance.

X Int. 73. Can you produce any examples of the circulars you sent out, trying to convince the trade that the Diamond was the best form?

A. Not at the moment.

X Int. 74. Will you send one of them to the magistrate, by mail, at your convenience?

A. I will do so.

X Int. 75. You have stated, as one of the essential requirements of a dress form, that it should "approach nature's figure as near as may be." You mean nature's figure as modified by the shape which fashion requires of a dress; do you not?

A. I do.

(Redirect by Mr. PERKINS:)

R. D. Int. 76. You mean by the Peerless form, do you not, the dress form like the exhibit introduced in this case, and marked Everett's Complete Form?

A. Yes.

R. D. Int. 77. Have you ever seen a form manufactured by the Everett Co. which is divided into quarter sections?

(Defendants' solicitor objects to the question as not germane to the cross-examination. Question withdrawn.)

477 R. D. Int. 78. What dress forms do you now sell?

A. The Diamond only.

CALVIN M. CRAM.

Subscribed and sworn to before me, this 15th day of November, 1888.

E. E. MARVIN,
Master pro hac vice.

(Cross-examination of Mr. C. A. Morss resumed by Mr. Beach:)

X Int. 25. You say that you do not think the adjusting apparatus of the Knapp form is of any great value. What do you mean by the adjusting apparatus of the Knapp form?

A. I referred to the knob on top, by which it is extended or opened and shut or by working it on top.

X Int. 26. I infer from the phrase which you use that you do not intend to deny that this capacity of adjustment from the top has some value. Is that so?

A. Yes. There are many ways of accomplishing the same end and that is one way of opening a form. I meant to say that I did not think that was the best way of doing it.

X Int. 27. Do you mean to say that you do not think it is as good a way as the way by which the Diamond form is shut and opened?

A. I do.

X Int. 28. And you do not think it is as good a way as the way by which the Hall form is operated; do you?

A. I do not.

X Int. 29. What is your principal objection to it?

A. Because it is a slow process. On the Diamond or Hall form they are opened by one motion, pushing up or down.

X Int. 30. Of course you have to unscrew the set-screw in order to move the rest in the Hall form?

A. Yes, sir.

X Int. 31. Then you have to screw the set-screw up again when you get through moving the rest in the Hall form?

A. Yes, sir.

478 X Int. 32. And then if your waist band does not happen to be set right you have to unbuckle that in order to enlarge the waist, don't you, in the Hall form?

A. You certainly would, as you would have to do to any form. You have to set it to the measure you want it.

X Int. 33. Now that is not true of any dress form, is it; for example, it is not true of the defendants' complete dress form, is it?

A. It is true of some dress forms; it is true of the one before me that I thought I was testifying about, which is defendants' form C.

X Int. 34. I did not intend to ask you about defendants' form C, but about defendants' complete dress form; is it true that you have to unbuckle a waist band in order to enlarge the waist in that form?

A. No, sir.

X Int. 35. Now to come back to complainant's, the Hall form, as illustrated by plaintiff's complete form, in order to enlarge the waist in that form you have not only to unbuckle the waist band, but also the band around the hips; is that so?

A. Yes, sir.

X Int. 36. And when you have your waist enlarged to the desired extent you have then to buckle up the waist band in order to fix the size of the waist in Exhibit Complainant's Complete Form, have you not?

A. Yes.

X Int. 37. And then you have to buckle up the hip band, too, have you not?

A. Yes, sir.

X Int. 38. Then why do you say it only takes "one motion pushing up or down" to adjust the complainant's form?

A. I meant that to expand or close it.

X Int. 39. You did not mean to say that it only takes one motion to adjust complainant's form?

A. No, sir.

X Int. 40. I wish you would figure it up and say whether I am right in saying that it takes seven distinct operations to adjust the waist of the skirt portion of complainant's complete form.

479 A. I cannot answer it. Some ladies might adjust it the first time trying, and some might try seven times, and then not adjust it to suit them.

X Int. 41. I am not asking you how many times a lady would have to try before she could adjust your form, but whether it takes seven distinct operations to adjust the waist of the skirt portion of complainant's complete form.

A. I don't know I am sure. I never had any occasion to investigate that; I should not know where to begin, or where to leave off; taking it out of the box might be one operation; I should want some instructions where to begin and where to leave off.

X Int. 42. Well, inasmuch as you claim that the skirt portion of complainant's complete dress form will serve to drape a child's skirt, and also a skirt for a large woman, we will suppose the form to be adjusted for a child's skirt, and I will ask you how many distinct operations it will take you to adjust it for the large woman's skirt?

A. I should first unbuckle two tapes, two operations; I should then push the top rest down till I got it to the size I wanted it for the large woman and set it there, release the screw, push down the collar, and set the screw, three more operations; then you would set the tapes as you wanted them, setting two tapes, two operations—seven operations in all, if you call it operations, motions, or operations.

X Int. 43. Now, since it is said to be essential to preserve the symmetry of the figure, you must set out the ribs, must you not?

A. Yes, in some instances.

X Int. 44. In all instances where the skirt of the woman was intended or required to be larger than a child's skirt you would have to adjust the bottom of the skirt, would you not?

A. Yes, sir.

X Int. 45. That would involve three more motions, would it not?

A. Yes, sir.

X Int. 46. Now you say that your principal objection to the Knapp adjustment is that it is a slow operation. Are you willing to submit the matter to a practical test and see if you can
480 adjust complainant's skirt portion of complainant's complete dress form from one given size to another as quickly as I can adjust the skirt portion of defendants' complete dress form?

A. No, I am not willing; it was what I believed and I swore to it honestly and I believe it now.

X Int. 47. But you decline to put your belief to a test?

A. Yes, sir.

X Int. 48. Do you sell directly to the consumer any considerable portion of your dress forms?

A. No, sir.

X Int. 49. To whom are the largest portion of your sales made?

A. To dress-form agencies.

X Int. 50. Who takes the largest proportion of your dress forms?

A. At this time Mr. R. R. Appleton; I mean this year.

X Int. 51. About what proportion of your dress forms are sold to him?

A. Three-quarters; all of that.

X Int. 52. For how long a time has Mr. Appleton taken the larger portion of your goods?

A. I should think, two years and a half.

X Int. 53. The best shape for a dress form is the shape that is fashionable for ladies' dresses, is it not?

A. We never recommend a portable dress form to fit dresses upon. It is desirable to get as near a lady's form as possible.

X Int. 54. Then, in that respect, you do not claim for your dress form all that defendants claim for their dress form, like Complainant's Exhibit Defendants' Complete Dress Form?

A. We do; we claim that ours will do all that theirs will do.

Adjourned to Nov. 16, 10 a. m.

NEW YORK, *Nov.* 16, 1888.

Accounting continued.

Present: Mr. Perkins, for complainant; Mr. Grindal for defendant.

481 (Cross-examination of Mr. MORSS resumed by Mr. GRINDAL:)

X Int. 55. In your answer to X Int. 53, you say that you never recommend a portable dress form to fit dresses upon. Do you mean that you never recommend the Hall form for that purpose?

A. Yes, sir. I will say that I never recommend that nor have I ever heard of that form, or any other adjustable form, recommended for that purpose.

X Int. 56. Do you mean to say that the Hall form is not adapted to having dresses fitted over it?

A. I don't mean to say that it is never used for that purpose, but I do mean to say that not once in a thousand times is it or any other adjustable form used for that purpose.

X Int. 57. Would not an adjustable form, adapted to be used for such purpose have a great practical value?

A. I cannot consider such a thing possible, and so I cannot answer it, for the reason that if a lady went into a dressmaker's to have a dress cut and fitted to herself I don't believe that once in a thousand times they would take a Hall, or a Knapp or any other portable form and set it and tell that lady they could fit her dress to it; that is what I meant.

X Int. 58. What reason is there in your mind which makes the usefulness of such a form, once set to the figure, less for fitting purposes than for draping?

A. I understand fitting a dress to a lady to be quite a particular operation; whereas draping is to get a general effect.

X Int. 59. The question was, if a form were adapted for fitting purposes, would it not have a great practical value? I do not ask if you know such a form, but what would be the value if there were such a form.

A. I don't think I could answer; I have never had any experience that way; I have never had any inquiry for it in business.

X Int. 60. Why do ladies use dress forms at all?

A. They are called a draping form; they are used for that purpose largely, and to get the general effect of a dress; but as to expanding any form that expands the same in every instance, that will fit the human form where there are very few of the
482 same shape, I should say that it was impossible to meet the inequalities of the different forms.

X Int. 61. Why is not this draping done on the human figure?

A. Draping is not fitting, and can be done on a dummy as well as on the human form. Because draping on the human form is a tiresome and tedious affair, draping is not so done.

X Int. 62. Is not fitting done on the human form equally tedious and tiresome?

A. I should suppose it must be.

X Int. 63. Would not a form, therefore, which obviates the necessity of fitting on the figure, have a value on that account as great as that of a form useful for draping?

A. If it were possible to get it, I do not know but it would.

X Int. 64. Do you know any reason why it would not?

A. No, sir.

X Int. 65. And if I understand you the Hall form cannot be used for such purpose?

A. I don't say that it cannot, but I say it is not generally and mostly; I did not say it could not be done.

X Int. 66. Can it be done on the Hall form?

A. I cannot say; I do not know but what it is possible. My business is to make and sell them and I should decline to say what its possibilities are. The Hall form has more powers of adaptability to a human form and could be adapted to cutting a dress over better than the Knapp form or any adjustable form that I have ever seen.

X Int. 67. Do you know how a dress is fitted over a form or over the human figure?

A. Not in detail, general principles.

X Int. 68. Please state the general principles so far as you know them.

A. I should say to have each individual dress fit each individual figure.

X Int. 69. Do you know how the different pieces of the goods, from which the dress is made, are fastened during the fitting process?

A. No, sir; the details I don't know.

X Int. 70. Why then did you say, in answer to X Int. 66, 483 that the "Hall form could be adapted to cutting a dress over better than the Knapp form;" please explain the detail of construction in the Hall form upon which you base your statement.

A. I was then comparing the Hall form with the Knapp form, or any other form that I had seen, and while the Knapp form extends four sections with very little variation from one time to another, and with no adaptability to getting different shapes to different shoulders, the Hall form has. Also for the bust, of which anybody knows there are no two persons alike, the Hall form can be adapted to different shapes upon different persons; also, the size about the neck—there is much more adjustment to it.

X Int. 71. Then, if I understand you correctly, your reason for the statement made in answer to X Int. 66, that the Hall form was better than the Knapp for cutting a dress over, is based simply and only upon your belief that the Hall form has superior possibilities of adjustment over the Knapp form? Is that so?

A. I believe that the Hall form will meet the different shapes of the human figure better than any other, and this is all the reason I can give at the present time.

X Int. 72. Please enumerate any features of the Hall form which, in your opinion, render it better for cutting a dress over than the Knapp form, other than your claimed superior adjustability.

A. I have not any other now, I believe.

CHAS. A. MORSS.

Subscribed and sworn to before me.

E. E. MARVIN,
Master pro hac vice.

WALLACE NORRIS, a witness on the part of the complainant, sworn and examined by Mr. PERKINS:

Int. 1. What is your name, residence, age, and occupation?

A. My name is Wallace Norris; age, 42 years; residence, New York city; occupation, manufacturer of wire figures.

Int. 2. How long have you been engaged in that business?

A. About 13 years.

484 Int. 3. What style of figures have you been manufacturing during that time?

A. I began with the manufacture of this two-part figure before me, marked "Everett Complete Form," which was in a very crude state in the beginning, but was generally reconstructed and very greatly improved by myself and foreman.

Int. 4. What was the extent of your annual sales of these figures from the year 1881 to 1883 inclusive?

A. About 9,000 in 1881, something over 9,000, and it increased up to the close of 1883 up to about 11,500.

Int. 5. Who did the selling of your dress forms during that period?

A. It was done by the means of extensive advertising through every conceivable channel, which I found paid me; also, very largely, through salesmen, who were employed by me as traveling agents, and through proprietors of fashion bazaars and pattern-houses all over the country, from California to Boston and Maine. I employed every facility of this kind that I could personally interest or secure by correspondence or through any of my traveling agents, who were authorized to establish such agencies.

Int. 6. Who besides yourself, if any one, personally superintended the selling of your goods?

A. No one. I had the sole charge of selling.

Int. 7. How many dress forms did you sell in the year 1883; do you mean that you sold more than 11,000 in that year?

A. Yes, I do.

Int. 8. What were your annual sales from 1884, inclusive, to August, 1887?

A. There was a decrease of about 25 per cent., possibly a little more.

Int. 9. Have you made any other style of dress form than the one before you marked, "Everett Complete Form," and if so, what and when did you begin?

A. I have. A new four-part adjustable figure called the Peerless, which I placed upon the market in the summer of 1887 and which I have continued to manufacture and sell since.

485 Int. 10. What have been the sales of the Peerless and what of the Everett Complete Form since you placed the Peerless on the market, comparatively?

A. I have sold more than ten times as many of the Peerless than of the Everett figure, notwithstanding the Peerless has sold at $10 and the Everett but $7.50 net.

Int. 11. How do the Peerless and Everett differ from each other, if at all?

(Defendants' solicitor objects to the question as calling for a comparison of forms not before the court and on the further ground that the witness is not qualified as an expert to make such a comparison. Question allowed only to the extent of the general distinctive difference.)

A. The Everett figure is a two-part figure, expanding in but one direction, laterally, the Peerless is a four-part figure, expanding in all directions like the Knapp.

Int. 12. State whether or not the sales of dress forms like the "Everett Complete Form" has continued to the same extent since August, 1887, as before?

A. No, sir. They have not; the sales have decreased greatly.

Int. 13. How much less have they been during the year, from August, 1887, to August, 1888, than during the year next prior thereto; I mean comparatively?

A. There has been an incredible decrease of about 90 per cent. People have come into the factory intending to buy the Everett figure and with but money enough to pay for it, have purchased the other, the Peerless, almost without exception.

Int. 14. Is the Peerless form made under letters patent?

A. Yes, sir; I should not have thought of putting such a valuable invention on the market without being fully secured.

Int. 15. How many sizes of figures like Exhibit Everett Complete Form were required to meet the various sizes required in the dress-form trade and how many did you actually make for that purpose?

A. I don't know as I can answer that question, as it is worded. I can tell you how many sizes I made and kept in stock, which was four sizes and supposed to cover all ordinary demands,
486 but both larger and smaller sizes were made when required.

Int. 16. What were the dimensions of the minimum and maximum circumferences of each at the waist band, of the four sizes you kept in stock?

A. No. 1, 20 was minimum and 28½ maximum; No. 2, 22 to 27½; No. 3, 24 to 30; No. 4, 26 to 32.

Int. 17. Of all the sales you made like Everett's Complete Form and Everett Form, what was the proportion of the latter, prior to 1884?

A. I should think, about half and half.

Int. 18. What has been the proportion since that time?

A. I should think that I had not sold nearly as many drapers or Everett forms as I did in former years, and I can only answer that further by giving the reasons why. I should say there had not been half as many drapers sold—I mean by that, Everett forms.

Int. 19. When you stated the number of forms you had sold, in your answer to Int. 7 and Int. 8, did you include the drapers or Everett form?

A. I did; I did not know that you had them separate.

Int. 20. What was the whole number of forms, like Exhibits Ev-

erett's Complete Form and Everett's Form, sold in the year next prior to August, 1888?

A. I should say, to the best of my knowledge and belief, not more than 1,000; somewhat less, I think.

Int. 21. Was the decline in the sale of your dress forms after 1884, gradual or sudden at first?

A. It was rather sudden during that year, surprisingly so.

Int. 22. And afterwards, how was it?

A. It was a continuous decadence.

Int. 23. What was the amount of the falling off which you say was so surprisingly sudden?

A. In the sale of that particular form, of about 90 per cent.

Int. 24. I mean in the year 1884. Is that the time you refer to in your last answer?

A. It is not.

Int. 25. Will you please state what it was in that year, if you can, in 1884?

487 A. About 25 per cent in that year.

Int. 26. What proportion of your figures, like the Exhibits Everett's Complete Form and Everett's Form, if any, were sold for displaying garments?

(Defendants' solicitor objects to the question as incompetent and immaterial. Question admitted and exception taken.)

A. They are all used for that, every one that has ever been sold; that is a part of the mission of the form. If you wish me to state how many are used for manufacturing purposes and for display, exclusively, that would be another thing.

Int. 27. I will limit my last question to forms used for displaying garments for sale or exhibition.

A. I should think, between one-fourth and one-third.

Int. 28. At what price did you sell the figures like Exhibit Everett Form, prior to August, 1887, and at what price since?

A. Prior to that date, $6 each; since that date $5 each. The price has been reduced.

Int. 29. At what price have you sold the Peerless skirt form since August, 1887?

A. $6.50 each.

Int. 30. Where are your salesrooms in New York?

A. 209 and 211 E. 22d street, at my factory.

Int. 31. Have they been at your factory always, since January, 1884?

A. They have always been there.

Int. 32. What proportion of the sales have been made at your salesrooms, at retail, since August, 1887, and what proportion before?

A. I really don't know.

Int. 33. Do they amount to one-fourth of all your sales?

A. Yes; a good deal more than that.

Int. 34. One-half?

A. I should think not quite.

(Complainant's counsel offers in evidence an exhibit, manufactured and produced by the witness, as a sample of the Peerless form, which is marked Complainant's Exhibit Peerless.)

488 Int. 35. Is the Exhibit Peerless the one which you have called the Peerless form in the earlier part of your deposition?

A. Yes, sir; it is.

(Cross-examined by Mr. GRINDAL:)

X Int. 36. In answer to Int. 3, you say that the forms which you made first were very crude. Do you mean that they were not practical forms adapted for use?

A. By the term crude, comparatively crude as the figure was then made and it is now made. It was eminently practical, and was the best thing of the kind that had ever been put upon the market, up to that time.

X Int. 37. You mean, simply, that it did not have the same beautiful form of finish that it now has, but not that there was something more to invent about it?

A. Not exactly that; there were changes in it, many minor changes. Many minor changes which were exceedingly important and valuable, and which added to the worth and utility of the form.

X Int. 38. When did you first put the Everett form on the market?

A. Nearly 13 years ago.

X Int. 39. About how many Everett forms were sold in the first year after they were put on the market?

A. I don't know; I should think about 2,000 or 2,500.

X Int. 40. During how many years did you and your foreman improve and reconstruct these forms until you reached the model like Everett complete form?

A. I think there were improvements made until between four and five years since.

X Int. 41. Can you tell when Exhibit Everett Complete Form was made, or those exactly like that; what period in the state of your art I mean?

A. That is a difficult question to answer. It might have been made eight years ago, there have been some slight changes since, but it was practically as complete eight years ago as that.

X Int. 42. How does the cost of manufacture of the earliest forms compare with the cost of this Exhibit Everett Complete Form?

A. The later forms cost the more to make.

X Int. 43. What was your selling price for the first form that you made?

489 A. I think some of the first forms were sold at $7, but a number of important improvements being made and the form meeting with ready sale and general appreciation, the price was advanced.

X Int. 44. So that you really made less profit on the Everett complete form than on the earlier ones?

A. Yes; because of the latter being better constructed; more than 50 per cent. additional labor being put upon it.

X Int. 45. In testifying to the number of forms sold at these various periods, have you relied entirely upon your recollection, or have you refreshed your memory by books or other memoranda?

A. I have not relied entirely upon memory; but, as I have had entire and exclusive control of everything, I am thoroughly familiar with the facts.

X Int. 46. How has your memory been assisted?

A. By continuous and frequent access to my books.

X Int. 47. Did you make any special examination with a view to testifying in this case?

A. No, sir; I did not.

X Int. 48. Were you the first to introduce adjustable dress forms on the market?

A. I claim to be the pioneer.

X Int. 49. And if I understand you, the demand for such goods was created and their general use brought about by your extensive advertising and the employment of traveling agents, and through fashion bazaars, etc., all over the country?

A. I do; I have been awarded that claim, without dispute, among my competitors; I salted the ground.

X Int. 50. To what do you attribute the decrease of 25 per cent. in your annual sales from 1884 to August, 1887, inclusive?

(Complainant's solicitor objects to the question, as calling for an opinion about which the witness has not been asked in the direct examination, and because it does not appear that he is competent to give an opinion upon that subject. Question admitted and exception taken.)

A. I attribute it to the introduction of a new style of figure.

X Int. 51. Please explain more fully what you mean by "a new style of figure"?

490 A. My form expanded but in one direction, the new style of figure expanded in transverse directions as well.

X Int. 52. Then you consider a figure expansive in all directions as more desirable for the general purposes for which such forms are used, than a figure which is simply in two parts like the Everett model?

A. Decidedly so, and that belief led to the necessity for an invention of the Peerless.

X Int. 53. In answer to Int. 11 you say "the Peerless is a four-part figure, expanding in all directions like the Knapp," so far as the direction of the expansion is concerned are they not exactly similar?

A. I think there is a little difference.

X Int. 54. Will you explain that difference?

A. The Peerless is capable of being expanded in halves, laterally, while the Knapp is not. If expanded at all each quarter of that moves outward equally, after the lateral expansion of the Peerless it then admits of a second expansion like the other.

X Int. 55. In giving the dimensions of the figures of the Everett forms, made by you, you refer to Nos. 1, 2, 3 and 4, each of various dimensions, what was the basis of the division into four sizes?

A. The basis was the minimum waist dimension of each size.

X Int. 56. Is the Everett Complete Form adapted to the fitting of waists over it?

A. It is; it has always been used for that, to a certain extent, and that is true regarding all adjustable figures and is the chief point of their superiority over the old, or non-adjustable forms.

Adjourned to Nov. 17—10 a. m.

NEW YORK, *Nov.* 17, 1888.

Accounting continued.

Present, Messrs. Perkins and Tucker, for complainant; Mr. Dane, for defendants.

491 Mr. COLEMAN, a witness for the complainant, sworn and examined by Mr. PERKINS:

Int. 1. What is your name, age, residence and occupation?

A. My name, John A. Coleman; age, 49 years; residence, Providence, R. I., and my occupation is mechanical engineer.

Int. 2. What experience, if any, have you had as an expert witness in patent causes and what experience to qualify you as such?

A. I have been engaged as an expert in patent causes more or less since 1873. I have been familiar with mechanical operations since early boyhood and learned my trade as wood and iron worker in my father's establishment and worked at said trade upwards of seven years. I then entered the service of the Providence Tool Company, at the commencement of the war and was chief assistant of the superintendent in the organization of an armory, for the making of Springfield rifles for the Government. When the equipment was complete I entered the service of the Corliss Steam-Engine Company and was chief assistant of Mr. Corliss in the organization of an experiment of machinery for the construction of marine boilers and engines for the United States Navy. After that period I was engaged as superintendent of the Providence Tool Company, in their up-town establishment, for the manufacture of heavy hardware, bayonets, sabres, etc. During all these periods of service I invented sundry machines, which were adopted by the respective companies. I next spent between one and two years in Idaho, where I erected a silver mill and opened a silver mine. I was next engaged, during a period of six years, in establishing batteries of steam boilers in various establishments in New England. After that I was sent to Europe and Egypt to establish plants of gun machinery for the governments of different countries, during a period of seven years. I again went to Europe to aid in establishing plants of horse-nail and horseshoe machinery. Since my return to this country I have been engaged in constructing machinery of my own invention, and in acting as consulting engineer, also as an expert in patent cases.

Int. 3. Have you examined letters patent to John Hall, No.
492 233,240, and do you understand the same, particularly the combination of the second claim thereof?

A. I have, and think I do.

Int. 4. Please look at the answer to Int. 8, in the deposition of Mr. Earle, a witness on the part of the defendants in this case, and state whether or not you agree with him in the comparisons there made of the Exhibit Defendants' Form A, with the conformation of the second claim of the said patent.

A. I do not agree with the opinion of Mr. Earle with reference to this Exhibit A. I understand him to say that there is not found the double oppositely inclined braces, stationary collar and adjustable collar, with braces connected with ribs, as in the plaintiff's patent, and this I totally disagree with. There is a set of double braces in this structure, situated upon a standard and connected to the ribs constituting the dress form, and operating to expand and contract those ribs to and from the standard in substantially the same manner, and to the same effect as do the double braces in the plaintiff's patent. It is true that their geographical situation is different in this structure, from that in the plaintiff's, but the effect is the same and the purpose is the same. In the plaintiff's structure the double braces are attached at that portion of the dress form designated as the waist band. Those double braces in the plaintiff's structure act against each other by means of a collar fixed upon the standard, to which one series of the members of the double braces are hinged while the opposite series are hinged to a sliding collar, moving up and down upon the standard. When the sliding collar approaches the fixed collar the ribs are expanded from the central standard and when they are drawn apart the ribs contract toward the standard. In the Exhibit A, the double braces are arranged somewhat differently than this, the operation being reversed, on account of the extension of the upper series of braces and the ribs being hinged to those extended ends of the upper series of these double braces, thereby enabling the collars when they approach each other to contract the ribs, and when they recede from each other to expand the said ribs. But the effect upon the dress form for the expansion and contraction of its ribs is in all substantial respects the same as that of the plaintiff's patent. The
493 hinged movable collar on this Exhibit A, is so arranged with a flange underneath the jointed inner ends of the series of braces that it can only be moved up so that the braces will stand in substantially a horizontal line when the braces are entirely expanded, but if that flange had been cut through, so that the movable collar could be raised still further than can be done in the Exhibit A, then the operation of these same braces would be exactly like that of the double braces in the plaintiff's patent, that is to say, when the collars were drawn apart from each other on the standards, the ribs would contract and when the collars approached each other the ribs would expand in a manner identical with that of the plaintiff's. It is only necessary with double braces that the upper and lower series of members should not be parallel with each other

and then whether the upper and lower series of members are both pointed upward or downward, or the upper series point upward and the lower series point downward, the mechanical effect is the same in a dress form in every instance. In this Exhibit A, instead of the braces being attached, as I said before, at a point called the waist band, the waist band might be said to be extended and a bust shape is given to that extension and the double braces are attached to the extremity of that extension, but these double braces are the essence in connection with the standard and the other means which are shown and described in the plaintiff's patent for making the Exhibit A, a successful dress form. One object of the double braces is for the attachment of ribs upon the dress form and to operate in such a manner that these ribs may be kept in substantial parallelism with the central standard when expanded from or contracted toward that standard. The double braces have that capacity and must possess that capacity in any dress form of this character to press the ribs to a certain point and then lock them there, that is what the plaintiff's double braces do and that is what the double braces in Exhibit A do. All other braces found in either the plaintiff's structure or in Exhibit A, are mere auxiliaries or stiffeners to give rigidity to the entire shape which is governed primarily and established by the double braces.

Int. 5. Mr. Earle says, in his answer to Int. 8, that the hip portion of the form is adjusted "by means of a single series of braces
494 connected to a screw collar on a shaft." What have you to say of the effect of omitting that series of single braces from the Exhibit Defendants' Form A?

A. As long as the double braces are in place that series of braces might be omitted, and the dress form would work substantially as it does at present without them. They seem to me to be entirely unnecessary, except as mere stiffeners at that point.

Int. 6. What would be the effect of placing the double braces at any other point between the point of attachment at the hips and the point of attachment at the extreme upper ends of the ribs, as shown in defendants' form A, provided the rib was continuous from the bottom to the top of the dress form?

A. It would not make the slightest substantial difference at what point the double braces were attached. If all other braces in the structure were taken out, the double braces will move the ribs outward and inward from the standard in equal degree, whether the braces be attached at the ends of the ribs, an inch below the ends, or at any other point upon the said ribs, so long as those ribs hang from the double braces.

Int. 7. Suppose you remove any one of the parts in defendants' form A, which you say is the same as or an equivalent of any one of the elements of the combination of the second claim of the plaintiff's patent, what would be the effect upon the operative character of that form?

A. If any single element was removed from the form A which exists in the plaintiff's patent, the structure would be inoperative; if the standard would be removed, it would be good for nothing; if

the ribs were removed, it would be good for nothing; if a single series of the double braces were taken out, it would be good for nothing; if a collar connected with the double braces and maintaining a fixed relation upon the standard, in opposition to a sliding collar on the standard, were removed, the structure would be good for nothing; or if a sliding collar of the double braces were removed, the structure would be worthless. In a word, if any one of the five elements of the plaintiff's patent or its equivalent were removed, a successful dress form of this character would be impossible.

Int. 8. You mean, do you not, by the words "dress form of this character" the Exhibit Defendants' Form A?

495 A. I do.

Int. 9. What have you to say, if anything, concerning the testimony of Mr. Earle, in comparing the Exhibit Defendants' Form B with the second claim of plaintiff's patent? Where you can avoid repetition by referring to any comparisons used concerning Exhibit Defendants' Form A, please do so.

A. Mr. Earle says, in summing up, that the mechanism in Exhibit B differs essentially from that in the Ufford forms, etc., because it does not have the double oppositely inclined braces found in the Ufford exhibit, and that there is no substantial equivalent for said oppositely inclined braces. I totally disagree with his conclusions upon that subject. There is the exact equivalent for the double braces. There are two collars upon a standard, one sliding and one fixed; there are the upper and lower series of said double braces attached to said collars, and the double braces are attached to ribs, constituting the dress form; the sliding collars move to and from the fixed collars on the standard, and causes the ribs to expand or contract.

The same is true of the Ufford structure. The only difference in operation between the braces of the two structures is, that the effect of the movement of the sliding collars is reversed. When the collars are brought towards each other, in the Ufford structure, an expansion of the ribs occurs, and contraction occurs when the collars separate; while in the defendant's form B, when the collars separate the ribs expand, and when the collars are brought together the ribs contract; but the effect and intention is precisely the same in both the defendants' form B and the Ufford structure, namely, to expand and contract the ribs from a common centre, and this same series of double braces in defendants' form B would operate in exactly the same manner as the Ufford form, if the thread had been cut a little higher up on the standard, to allow the sliding collar to pass higher, so that the braces would have been oppositely inclined, as they would be if the higher sliding of the collar had been permitted, and it would have been necessary only to cut out that portion of the flange of the sliding collar lying under each of the series of braces to have largely enhanced the result.

The mere elongation of the ends of the upper series amounts to nothing, mechanically speaking, except to gain leverage and
496 cause a little less movement of the sliding collar upon the standard.

Int. 10. What have you to say, if anything, concerning the testimony of Mr. Earle, in comparing the Exhibit Defendants' Form C with the second claim of plaintiff's patent? Where you can avoid repetition, by referring to any comparisons used in regard to previous exhibits, please do so.

A. The Exhibit C and the Exhibit B are the same to all intents and purposes, except that the braces are inclined the reverse in Exhibit C from those in Exhibit B, the change amounting to nothing, mechanically speaking, so far as the double braces are concerned in affecting the movement of the ribs.

With the exception of this reversal of the direction of the double braces, the comparison which I have made with defendants' form B and the double braces of the Ufford structure, and the conclusions expressed, apply equally to this defendants' form C.

Int. 11. What would be the effect in either of the Exhibits Defendants' Skirt Form and Defendants' Forms B and C and Defendants' Complete Dress form, if either of the parts which is the same as, or an equivalent of, any element in the combination of the second claim of the plaintiff's patent, was removed?

A. Neither of them would be operative if a single one of the five elements of the plaintiff's patent should be omitted.

Int. 12. You have stated, in your answer to Int 4, that in the plaintiff's structure the double braces are attached at the waist band; do you mean literally that?

A. That was inaccurate, as shown by the patent. The attachment seems to be in the vicinity of the hip portion. It is a matter, however, of no moment, for the mechanical effect is substantially the same whether the ribs are attached at the waist band, the hips, or at other points contiguous or remote from them.

Int. 13. Please look at Int. 9, and its answer in the deposition of Mr. Earle, on page 189 of the printed record herein, and state whether you agree with him?

A. I do not agree with the opinion expressed by Mr. Earle,
497 but on the contrary I do find the combination of the second claim of the plaintiff's patent in every one of said forms.

Int. 14. Please look at the answer to Int. 14 of Mr. Earle's deposition, on page 193 printed record in this case, and state what, if anything, you have to say concerning his comparisons of the Shaw, Robbins and Kirkham umbrella patents with the second claim of complainant's patent?

A. I do not agree with his conclusions from comparisons of the said umbrella patents with the plaintiff's patent for a dress form. None of the said umbrellas contain all the elements that are necessary to make a dress form like the plaintiff's, which dress form has a series of ribs, capable of imparting their shape to soft fabrics placed upon them, and which dress forms may be adapted to all sizes of persons without substantial change of its shape. An umbrella is a structure which at one moment has the form of a cylinder, when closed, but which ceases to be a cylinder the instant expansion of its members from the central standard is commenced and changes its outward shape during every instant of its expansion until it may

resemble a cone and sometimes almost a hemisphere. Its shape is never twice alike during expansion or contraction. In the dress form the contrary is true, the shape always remains substantially the same although its dimensions may vary, therefore the umbrellas cited do not anticipate the second claim of the plaintiff's patent.

Int. 15. State whether or not you find the ribs *c* of the complainant's patent or their equivalent in either of said umbrella patents?

A. I do not. The ribs *c*, of the plaintiff's patent, are organized to remain in a position substantially parallel with the standard, whether they be closed or partly closed or widely extended from the standard. The umbrella ribs have no such organization and parallelism with the stick was never intended nor can it be effected. The ribs of the umbrella are parallel with the standard only when closed, but they cease to be parallel the instant expansion begins, as already stated; hence, when they cease to retain their shape their change of dimension begins.

Int. 16. It has been stated by witness, on behalf of complainant, that the essential requisites of a dress form is that it should be adjustable to all sizes of persons, from a child to an
498 adult. Please look at the Exhibit Wilson Form and state whether or not it possesses such requisites and your reasons therefor?

A. It is most decidedly not a structure capable of being made a practical dress form. It is a mechanism embodying, in a rude way, the principles of an umbrella, having members attached to a cap at the top; while the said members may be expanded into a cone, like the similar members of an umbrella. It is not a structure capable of imparting its shape to soft fabric and having its dimensions changed, without changing the shape. Like the umbrella, it forms a conical shape at one instant, but that conical shape changes at each instant of change of dimensions. That is not true of a dress form. There is a detail in this structure which is unimportant as effecting this umbrella principle, namely, that the cap, as I have termed it, is cut apart and one-half is capable of expanding in one direction only from the other, but this in nowise affects what I have already stated, in regard to it, as to the principle of its operation. The structure was evidently intended for the employment of stiff material like wire, but never to impart its shape to a soft fabric.

Int. 17. Assuming the statement of the witnesses to be true that the chief requisite is that a single form should be adjustable to all sizes, without change of shape, compare the merits of the Wilson form for that purpose with those of each of defendants' forms represented by defendants' form A, B and C, and defendants' complete dress form and defendants' skirt form, as a class.

A. In all the forms referred to there are ribs, which hang substantially parallel to the standard, under all circumstances.

In the Wilson form there are no ribs which hang parallel to the standard, under all circumstances. All the defendants' forms mentioned are capable of representing all the female members of a family, from a child to the largest person, in a single structure, and the Wilson form is not. All the defendants' forms mentioned are capa-

ble of being revolved upon the standard, under all circumstances, and the Wilson form is not, under any circumstances whatever.

The Wilson form is absolutely incapable of acting as an expansible dress form, which must maintain its shape under a change of dimensions, and, in my opinion, has no bearing on this case.

499 Int. 18. State whether or not the Exhibit Plaintiff's Skirt and the skirt portion of the Exhibit Plaintiff's Complete Form contain the combination of the second claim of the patent in suit.

A. They do.

Int. 19. How do the exhibits mentioned in the last question compare with the defendants' forms, exhibits of which are in this case, with reference to the chief requisites of a dress form, as before stated?

A. In all the chief requisites they are substantially the same.

Int. 20. Do the Exhibits Everett's Complete Form and Everett's Form contain a skirt structure variable in size, without change of shape?

A. They do not.

Int. 21. I mean practically, not literally.

A. They do not, practically or literally.

Int. 22. Of what value would the dress forms, like the exhibits of the Defendants' Dress Forms A, B, C and Defendants' Complete Dress Form and Defendants' Skirt Form be, if you remove the elements therefrom, which, you have stated, embodied the combination of the second claim of the patent in suit?

A. They would be of no value whatever as dress forms for commercial use, as I understand the prime requisite of a dress form to be a single structure, the shape of which shall always remain the same, however the dimensions of that shape be changed; otherwise, it would require a sort of gallery of forms for a family composed of many female members of varying sizes.

Int. 23. Do you mean, by your last answer, to have me understand the form would be valuable for any purpose if the combination of the said claim were removed?

A. It would be of no value whatever as an expansible dress form, for it would not expand and remain expanded.

Int. 24 You mean to have me understand that the entire commercial value of each of the defendants' forms referred to in Int. 22, depends on each of the elements of the combination of the said second claim?

A. I do.

Int. 25. How would you answer the last question with reference to the Exhibits Plaintiff's Complete Form and Plaintiff's Skirt?

500 A. I should give the same answer. It depends upon every element of that combination.

Int. 26. What do you say of the operative character of said second claim, if arranged as shown by the drawings of the patent without the use of an elastic band referred to in the specification. I use the word operative in a mechanical and not a commercial sense.

A. It would be entirely operative in that sense.

Int. 27. How?

A. If the dress or skirt were placed over it, the form would be held in place thereby and the dress would be held out by the form, so that as the patent says, the dress would be filled out perfectly, in order that trimmings, etc., might be placed upon it.

Int. 28. Please look at the Exhibit Peerless and state whether it has the capacity of adaptability to all sizes without change of shape?

A. Practically, yes; within certain ranges.

Int. 29. What is the principal difference between it and Everett's complete form?

A. Everett's complete form is a structure divided longitudinally into halves. It is a structure in which the same shape cannot be retained when its dimensions are varied. The difference between it and the Peerless form is that the Peerless is divided longitudinally into quarters and can more approximately retain its shape when its dimensions are varied.

Int. 30. How does the Exhibit Peerless differ from forms like the plaintiff's skirt, and exhibits representing the defendants' forms?

A. It differs in the details for expanding its ribs. The Peerless depends for moving its sections outwardly and inwardly working upon arms radially extended from the standard. The quarter sections must be moved out separately, requiring more or less trouble in so doing, while in the other structures referred to the sections are moved out simultaneously from the standard by the peculiar mechanism. Simultaneous and equal movement is impossible to the Peerless structure with one person to operate it; while simultaneous equal movement is a necessary result in the other structures.

Adjourned to November 19, 10 a. m.

501 NEW YORK, *Nov. 19th*, 1888.

Accounting continued.

Present, Messrs. Perkins and Tucker for complainant; Messrs. Dane and Beach for defendants.

(Cross-examination of Mr. COLEMAN by Mr. DANE:)

X Int. 31. Did you ever see a dress form constructed, in all respects, like the contrivance shown and described in the Hall patent upon which these suits are based, and if yea, where and when?

A. I have, in all substantial respects, and the exhibits are here in this room.

(Answer objected to as irresponsive and the question repeated.)

X Int. 32. X Int. 31 repeated.

A. The answer to X Int. 31 is repeated. The only difference that exist between the dress forms referred to and that described in plaintiff's patent is in immaterial changes in detail of mechanism.

(Defendants' solicitor repeats objection and request.)

X Int. 33. X Int. 31 repeated.

A. The dress forms referred to are in all respects, as regards principle, the same as the dress form of complainant's patent. As regards *to* details of mechanism, they vary on the details shown in plaintiff's patent, but the changes are immaterial, or they in nowise effect the operation of the dress form as it was intended to be operated, which was to expand and contract ribs from a common center without materially altering the shape of the dress form in altering its dimensions.

X Int. 34. Inasmuch as you have failed to answer my question, I presume that you admit that you have never seen a dress form constructed, in all respects, like the form described in the specification and shown in the drawings of the Hall patent referred to.

502 (Complainant's solic-tor objects to the first statement of the question as assuming a fact that does not exist, namely, that the witness has not answered the question. Question admitted.)

A. The dress forms referred to are in all respects, as regards principles, the same as dress form described in the plaintiff's patent. The dress forms referred to are not the same in all respects, as regards details of mechanism, to carry out these principles. That is all that I have said and all that I mean to be understood to say.

X Int. 35. The nearest approximation to the skirt form, described in plaintiff's patent, is the one in evidence, marked Plaintiff's Skirt; is not such the fact?

A. Its details more closely resemble the details of the patent than others that are exhibited.

X Int. 36. Why, if you know, are the lower braces in the plaintiff's skirt form telescopically in two parts.

A. I should suppose to get an additional advantage in case additional extension at that point was desired.

X Int. 37. You admit, do you not, that you do not know the real purpose for which the braces referred to were made?

A. I do not admit anything of the kind. What I have stated is a real purpose that could be accomplished by such mechanism.

X Int. 38. And you have stated the only purpose of their being intended to act telescopically?

A. No, I have not stated the only purpose.

X Int. 39. State such other purposes you think they are intended to effect?

A. Well, I can conceive that another purpose might have been to make them sell better.

X Int. 40. Any other purpose?

A. It might have been merely to please the fancy of the inventor.

X Int. 41. Then if I understand you correctly you know of no other real purpose to be accomplished by the telescopic arrangement of the braces than that given in your answer to X Int. 36 and 39?

503 A. There might be the purpose of expanding individual ribs or a section of the series of ribs to meet a special fancy or fashion.

X Int. 42. Your answer to my last question, together with that given to X Ints. 36 and 39, states all the purposes of the telescopic feature of the braces that you have any knowledge of; is such the fact?

A. Those answers state all I happen to think of for the moment.

X Int. 43. You are quite familiar with the specifications and drawings of the patent upon which these suits are based, are you not?

A. Reasonably so.

X Int. 44. Sufficiently so to enable you to state the substance of the specification and the object specified therein by the inventor and without referring specifically to the specification at this time?

A. I think I understand the general scope of the patent, but I should not undertake to make any statement in regard to the specifications, the accuracy of which might be injuriously affected by not having the text of the patent before me.

X Int. 45. It is true that Hall in his patent does not describe a waist and skirt as a unit. Am I correct?

A. I must beg to be excused from answering any specific questions as to the text of that patent until a copy is produced.

X Int. 46. In what material respect, if any, does Complainant's Exhibit Plaintiff's Complete Form differ from the Hall patent upon which the suits in which you are testifying are based?

A. In no material respect as I understand the patent.

X Int. 47. In the skirt part of the form referred to in my last question, there are adjustable set collars, each provided with a set-screw, two of them operating in conjunction with the slides to which the inner ends of the double series of opposing braces are attached and the third beneath the lower series of braces, all of which are located beneath the top of the skirt part of the form, and all parts adjusted below the upper part or waist band of the skirt; is not such the fact?

A. Yes, that is substantially true.

504 X Int. 48. Why do you say "substantially"? Is it not the fact?

A. Yes.

X Int. 49. As you now have the Hall patent before you, I now ask that you answer X Int. 45. X Int. 45 read.

A. Hall says in his patent, "My invention relates to improvements in dress forms, by means of which every part of the device is rendered adjustable, so that it may be applied to a dress of any size or style and fill it out perfectly, in order that trimming may be placed upon it," etc.; further on he states, commencing at line 24, "This pole or standard is designed to support an entire dress form, which is made, however in two distinct parts, which I will designate as the skirt form and waist form, the principal of the invention is the same in both." I understand that language to speak of an entire dress form as a unit, but which the patentee shows may be divided into two sections, a waist form and a skirt form, but the patentee says that the principle for operating both sections is the same, and the patentee states that his dress form is rendered ad-

justible so that it may be applied to a dress (spoken of as a unit) of any size or style and fill it out perfectly.

The dress is spoken of as a unit, as I understand language, and the form to fill it out is spoken of as a unit, if I understand the English language, but the inventor says that this form is divided into two sections as already stated, but that both sections are worked upon the same principle.

X Int. 50. Is it your idea that the language "to fill it out perfectly" is intended to convey the idea that the skirt is or may be expanded at every part thereof to its fullest extent that the style of it will permit?

A. Yes, to fill out the skirt and the rest of the form; to fill out the rest of the dress, if desired.

X Int. 51. Please examine the Exhibit Defendants' Form A and state whether the adjustment obtained at the waist band by rotating the uppermost wheel, is, in your opinion, obtained by the same mechanical devices as those of the second claim of the patent in suit, and in answering this question, please assume that the lower wheel remains stationary.

505 A. I regard the movement made by exactly the same means as those of the plaintiff's patent. True, there is a certain amount of movement that may be obtained at the waist band, by expanding the braces at the waist band only, much of which is due to the springing of the different parts of the structure of the ribs of the structure when resisted by the double braces at the top; but its full and practical movement as a dress form, to represent the different members of a family, from a child up to the largest person, is due, purely and simply, to the elements found in the plaintiff's patent.

X Int. 52. You say that it is true that there is a certain amount of movement at the waist band, by expanding the braces at the waist band only. Now, I will ask you whether or not it is true that the entire range of movement of which the figure is capable at the waist, from its smallest circumference, when its quarter sections are practically in contact with each other at the waist, up to the largest circumference, where the braces at the waist band stand practically horizontally, may be obtained by rotating the upper hand wheel and leaving the lower hand wheel at a fixed point?

A. The complete movement cannot be made on that structure without using the elements of the plaintiff's patent; mechanically speaking, without straining the parts out of their normal condition. You cannot make a parallel and equal movement in all directions from a standard, by holding one end of the ribs at a fixed point from a given center and allowing the other end of the ribs to be moved through constantly varying distances from a common center. That is obvious, I think, to any one familiar with mechanics.

If the structure was made of rigid material, incapable of spring or distortion, it would be obvious at a glance that the ribs could not be maintained in a fixed position at one end, and moved to varying distances from a common center at the other, and produce the parallelisms of movement of the ribs with the central standard,

which should make a dress form the shape of which should be unchanged, while its dimensions could be varied at will. That is what the plaintiff's structure permits, and that is what the defendants' form A performs when used legitimately, as dress forms are generally used. The means for the accomplishment of the purposes of the dress form are the same in each.

506 X Int. 53. Do I now understand you correctly, when I infer that you admit that such adjustment as is in fact obtained at the waist of Exhibit Defendants' Form A, by use of the upper hand wheel only, is obtained by a different combination of devices than that obtained by the devices of the second claim of plaintiff's patent, as you understand that claim?

A. No, sir; my language is clear and unmistakable, that the devices of the Exhibit Defendants' Form A, for producing its proper movements as a dress form, are the same as for producing the proper movements for a dress form in plaintiff's structure, and I will go further than this, and state that in the Defendants' Form A, there are two distinct sets of double braces, one in the skirt and one in the bust, just as there are in the skirt and waist of complainant's patent, immaterially varied in form only.

X Int. 54. So that in your judgment the skirt portion of Defendants' Form A, including the hand wheel for adjusting the same, contains the elements of the combination of the second claim of plaintiff's patent in suit; is that so?

A. Yes, it does, and the structure as a whole contains it also.

X Int. 55. You intend to answer the last question unqualifiedly in the affirmative, do you not?

A. I do.

X Int. 56. Would it make any practical difference in the use of the Exhibit Defendants' Form A, if the two sets of braces in the skirt portion of the figure were inclined in the same general direction, instead of being inclined one upward and the other downward?

A. I should say with regard to Defendants' Form A, that the expansion and contraction of that form can be theoretically produced by the double braces at the collar, or properly speaking, the upper part of the bust form, that the other braces are only auxiliaries of the double braces, simply useful as stiffeners to rigidly maintain the form established by these upper braces, and that one pair of them at least, if turned in the direction indicated by the question, would be entirely superfluous. The form would be better without them.

X Int. 57. Now, as I think we don't quite understand each other, I will ask you again, if you still intend to state unqualifiedly

507 that you find in the skirt portion of Defendants' Form A, with its hand wheel, the combination of the second claim of the patent in suit?

A. Yes, I see no reason to change my opinion at present.

X Int. 58. Now do you think it would make any practical difference in the operation of the whole form if the two sets of braces in the skirt form were inclined in the same general direction?

A. Taking the form as a whole with the double braces of the complainant at the neck or top of the bust, these auxiliary braces simply as braces, if they were of the same length, would have just one set too many to be of any practical use. With the hand wheel and the right and left hand thread, which under these conditions, would pull these braces apart, I have nothing to do further than to say if the two sets of braces were left in, then the thread I should say, should be of the same direction of pitch for both.

X Int. 59. I think you are right about that. It seems to me if one set of braces was reversed and both sets traveled upon a screw of the same direction of pitch that they would practically work as well as they do now, and I want to know whether you agree with me in that?

A. I wish to make my answer clear, by stating that with double braces situated as I have already stated and determining the measure of the expansion or contraction of the ribs and with auxiliary braces below, so organized as to expand and contract the ribs in the same measure as that established by the double braces above, then no matter how many sets of single braces, and all inclined in the same direction, are applied above the necessary number to act as stiffeners it would amount to nothing but a useless repetition in a dress form, for they would do no good.

X Int. 60. That does not quite answer the precise question I wanted to ask, which is, whether it would make any difference in the mode of operation of such a form as Defendants' Form A if these auxiliary braces, as you call them, were inclined in the same direction instead of being inclined away from each other?

A. I can add nothing more to what I have already said.

X Int. 61. Then I will put the question in another way,
508 and ask whether, if the two sets of braces on the skirt portion of Exhibit Defendants' Form A were inclined in the same direction, instead of being inclined away from each other, you would still find, in such modified construction, that the skirt portion of Defendants' Form A contained the same combination of elements as that recited in the second claim of the patent in suit?

A. If you will bring me a model of just what you want to talk about, upon examination of such model, if I see any reason to vary my answer from what I have already stated, I will most cheerfully do so; but at present I can make no further answer upon that point than I have already done. I will state this, however, in the hope of making my views still clearer, that if both sets of auxiliary braces were removed from that form, the upper set or double braces will expand or contract the shape of the entire form without substantial alteration of the shape, and if a single set of the auxiliary braces be then added to that form, they will act to hold that shape by stiffening the form; and if a second pair of auxiliary braces be added to that form, they will add still more stiffness to the form; and if a third pair of auxiliary braces were added, they would still further stiffen the form, and so on, till the room for placing braces was exhausted; it being understood, of course, that proper means were employed for expanding and contracting the braces.

X Int. 62. I will endeavor to prepare the model before the close of your examination; but I will ask you whether your unwillingness to testify without an actual model arises from any failure to understand exactly what my supposed construction was, because I have observed from your last answer that your unwillingness to testify about imaginary constructions is not constitutional?

A. I am not aware that I have manifested any unwillingness to testify, but I have answered your questions as I have understood several times, and I know of nothing more to say.

X Int. 63. Did I understand from your answer to X Int. 59 that as Defendants' Form A now stands, you regard the two sets of braces, in the skirt portion of the form, as stiffeners rather than adjusters?

A. They are stiffeners and adjusters in the same sense that the auxiliary braces in the plaintiff's form are. They do stiffen
509 and can be adjusted and so can the plaintiff's. In the form A the mechanism is complicated and the different braces may all be operated together or they may be adjusted alternately, in order to increase the dimensions of a given shape without changing that shape.

Adjourned to November 20, 10 a. m.

NEW YORK, *Nov.* 20, 1888.

Accounting continued.

Present, Messrs. Perkins and Tucker, for complainant; Mr. Dane and Beach, for defendants.

(Cross-examination of Mr. COLEMAN continued by Mr. BEACH:)

X Int. 64. Do you regard the two sets of oppositely inclined braces in the skirt portion of Defendants' Form A as the double braces of the second claim of the patent in suit?

A. I do, but they are of no importance as such in this structure, because it is not necessary to have two sets of double braces in a single structure of this character to operate it practically as a dress form in the manner intended, in the plaintiff's patent. In this instance the single braces, as stated before, are only necessary as auxiliaries to the double braces and as stiffeners at such parts of the form as rigidity is desirable.

X Int. 65. Do these two sets of braces, in the skirt portion of Defendants' Form A, have the mechanical function of the double braces of the second claim of the patent?

A. They possess the capacity of the double braces of the plaintiff's patent and they would exercise the function of the double braces if the waist were cut off and the skirt remained as a single structure, but while the waist and skirt are integral with each other the double braces in the neck deprive them of the exercise of their functions, in the skirt they then amount to nothing more than auxiliary stiffening braces.

510 X Int. 66. Then they do not exercise in the form A the functions of the double braces of the second claim of the patent in suit, do they?

A. Only incidentally.

X Int. 67. Do they exercise such functions at all?

A. Only passively.

X Int. 68. Don't you really mean to say that you find the capacity for infringement of the second claim to be embodied in the skirt portion of the form A, but that such capacity is not exercised in the Defendants' Form A, as at present organized?

A. Yes; I find the plaintiff's principle twice in that structure, either one is enough to operate, that is if one were taken out the other would do the work and *vice versa*.

X Int. 69. That is to say, if the braces at the neck of form A were taken out, you think the braces at the waist would be operative to support the ribs of the skirt form at adjustable distances from the standard?

A. Yes. If the braces at the neck were removed, then the two sets of lower braces as they are organized would operate against each other, and the structure would then be in that condition that in the language of the inventor, "it may be applied to a dress and fill it out perfectly in order that trimming may be placed upon it, etc." In that case with a dress of suitable shape, and this structure expanded into it to fill it out, it would exactly meet the requirements of the plaintiff's patent, and contain the elements of his second claim.

X Int. 70. You say the braces of the skirt portion of the form A would operate against each other; what do you mean by that?

A. The upper series pushes the ribs upward and outward, and the lower series downward and outward; in other words, the two series pull the ribs in opposite directions, and the operation of these forces pushes the ribs outwards.

X Int. 71. Do you attach any special importance to the fact that the ribs are pushed in opposite directions by the braces?

A. It is that which constitutes them double braces in the sense of the patent. There must be two forces acting against each other from the common center to produce the resultant force of moving the ribs out in a line parallel, or substantially parallel, with the common center.

511 In the Defendants' Form A, the double braces of the skirt are merely the reversal of the double braces of the plaintiff's patent. The principle remains the same, and the intention in both cases is to push the ribs of a dress form radially from a common center, and that is the result in both cases.

It is understood in the answer that we are confining ourselves to the skirt portion, with double braces of the neck of the dress form removed.

X Int. 72. If the two sets of braces, in the construction to which you refer in your last answer, were both inclined in the same direction, so that one could not push the ribs up and the other could not pull the ribs down, but so that both push the ribs up or both pull them down, then, if I understand you correctly, such construction would not contain the double braces of the second claim of the patent in suit; is that so?

A. That is strictly so; the structure would be good for nothing; it would collapse. Accuracy, however, being observed as to phrase, inclined in the same direction.

X Int. 73. Do you mean if they were not exactly parallel the structure would not collapse?

A. If they were substantially parallel, they would collapse in a dress form.

X Int. 74. And the fact of their collapsing, or not collapsing, in your mind, would be the test whether or not they were the double braces of the plaintiff's patent?

A. The fact that braces would collapse would, I think, be conclusive that they were not the plaintiff's double braces and the fact that they would not collapse in a dress-form structure of this character, I think, would be conclusive evidence to me, as I understand the principles involved in this case, that such braces would be the plaintiff's.

X Int. 75. Then upon your construction of the double braces of the plaintiff's patent, it is quite immaterial that they should be oppositely inclined; is that so?

A. It is material that they should always be oppositely organized with reference to each other, that is, that the force of one should resist the force exerted by the other and yet both co operate for a common purpose.

X Int. 76. But in your testimony on this accounting you
512 have assumed, have you not, that it was immaterial to the question of infringement whether or not such braces were inclined in the same general direction?

A. It makes no difference in a dress form, in which the double braces are used, whether the two series composing the double braces are oppositely inclined, or both series are pointed in a downward direction, or both series are pointed in an upward direction, so long as they are not parallel to each other.

X Int. 77. You have also assumed, have you not, in your testimony in this accounting, that it is immaterial to the question of infringement, whether the two series of braces which in your opinion constitute double braces, are of the same length?

A. Ce-tainly; when the action of double braces is considered that fact is apparent. In a dress form a single brace is sufficient merely to expand a rib from the standard, but a second brace is necessary to hold it there under one form of the double braces. Taking the Defendants' Form A, for an example, the upper of the double braces of the neck may be as short as it there appears, and it braces out the ribs in a perfect manner. When it is out it is necessary to hold it out by the under brace and that brace might run down on this form at least twelve inches further than it does now, and it would operate exactly as it does now.

X Int. 78. You have also assumed that it is immaterial to the question of infringement, whether such series of braces are attached to the ribs at or near the same point, or whether one series be attached at the waist and the other series at a point half way down the skirt, have you not?

A. As far as infringement goes it makes no difference in my opinion. There is of course a proper way for practical operations to carry out the principles of the plaintiff's patent in order to make a successful working machine for commercial purposes.

X Int. 79. It is also immaterial in your judgment that such series of braces should both be operated at the same time by a single adjusting device, is it not?

A. Entirely so.

X Int. 80. That second claim in your judgment, practically includes any dress form having a suitable standard, a suitable
513 series of ribs, two or more series of braces so placed as to prevent the form from collapsing, and means substantially like these described in the patent for operating the braces to expand and contract the ribs, does it not?

A. Yes. The second claim calls for the combination of standard, ribs, double braces and suitable means for operating the braces substantially as and for the purpose set forth, and the purpose set forth was to expand and contract a single structure having a given shape from small to large and large to small without changing that shape, and then of maintaining that shape throughout any portion of its enlargements or contractions for the purposes of supporting and giving its form to garments.

X Int. 81. Will you please to say whether I am correct in stating the operation of the waist adjustment of Defendants' Form A, to be substantially as follows: When the upper hand wheel alone is rotated, namely: that the ribs of the skirt form open and shut in a radius of a circle swinging upon the hinged brace at the neck, as upon a pivot?

A. When the dress form is operated in that manner, it is operated on the umbrella principle, and the ribs then are pivoted at the necks, where they are held in a fixed relation to the central standard, and the opposite ends of the ribs are swung through the arc of a large circle, as in the umbrella case, only effected by the lowermost set of stiffening braces which prevents the series of ribs from assuming the normal, conical shape, through the springiness of the material of the structure, this of course being more apparent when the neck is closed tight and the waist and bottom braces expanded, than when the structure is wide open at the neck. When the neck is fully expanded and left so and the skirt portion drawn in by the waist and lower braces, then the converse of the proposition is true and the bottom of the skirt is drawn close together while the waist is left open, and it is only possible to close the two together unless the double braces in the neck are also closed without accomplishing it by distorting and straining the material.

X Int. 82. If I understand your last answer, it amounts to this, does it not, that the bottom of the ribs of Defendants' Form A, when the same is operated by turning the upper-hand wheel only,
514 would be more widely distended when open if it were not for the lower set of braces, which pulls in the bottom of the skirt towards the standard?

A. I think it would, in a measure, especially when the neck is

tightly closed; but it is a matter of no importance whatever to the general umbrella principle which is exerted, except in degree, when the neck braces are not operated and the movement is confined solely to the waist and lower braces.

X Int. 33. Then it is true, is it not, that so long as the neck adjustment is kept stationary Defendants' Form A operates as to its waist adjustment, substantially on the umbrella system?

A. It does, in the same sense that the Hall patent does; for example, if the double braces of the Hall skirt were set at a fixed point of expansion, and the lower braces were expanded in greater ratio than that, the ribs of the Hall patent would be acting on the umbrella principle at that instant, but when the double braces of the Hall patent were afterwards adjusted to a point of expansion, in conformity to that of the auxiliary braces, then we have exactly what is done in Defendants' Form A. In both the plaintiff's and defendants' structures, they may both be expanded at one point first and then afterwards at another point, or they both may be expanded at the several points simultaneously in a single structure, according to the will of the operator; that is to say, when both single and double braces are used.

X Int. 84. By the words lower and auxiliary braces, in your last answer, do you refer or not to the single series of braces attached at the lower part of the Exhibit Plaintiff's Skirt?

A. Yes.

X Int. 85. Is there any connection between the waist portion and the skirt portion of Plaintiff's Complete Form, such as you have testified exists between the waist portion and skirt portion of Defendants' Form A, and which was, if I correctly understood your testimony of such a character, that the adjustment at the neck of Defendants' Form A could theoretically adjust the entire form, including the skirt, if the braces in the skirt portion were omitted?

A. The plaintiff's complete form is divided into two distinct organizations; namely, the waist organization and the skirt organization, each containing the complete principles of the plaintiff's
515 patent. The patentee himself says in terms, "the principle of the invention is the same in both." In the Defendants' Form A the election was made to construct the complainants' form as only one organization, instead of two, as did the plaintiff; but that one organization also contains the complete principles of the plaintiff's patent. That is all the difference there is between the two structures in principle.

X Int. 86. It is true, is it not, that the patent in suit expressly says that the waist and skirt portions of the entire dress form were made in two distinct parts?

A. It says it is made so. It says further, however, that the principle of invention is the same in both.

(Redirect by Mr. TUCKER:)

R. D. Int. 87. In Int. 71 you were asked about the ribs being pushed in epposite directions; what do you understand by opposite directions, as there used?

A. I understood the term to be used by counsel as meaning one series of braces as pointing upward and pushing the ribs upward and another series of braces pointing downward and pushing the ribs downward, in that particular instance, and the result of that operation was to push the ribs away from a common center.

R. D. Int. 88. If both these series of braces were arranged so as to point downwards or both arranged to point upwards and set at an angle to each other, so that their forces would act against each other, what would then be the result?

A. Then they would be the double braces of the plaintiff's patent.

R. D. Int. 89. In what sense did you understand the words oppositely inclined, to be used by defendants' counsel in X Int. 75?

A. What I understood by oppositely inclined was one series pointing downward and the other series pointing upwards.

R. D. Int. 90. Do you consider it material that the two series of braces composing the double braces should be oppositely inclined, when the words are used in that sense; that is, one pointing up and the other down?

A. It is perfectly immaterial in what direction the two sets of braces point, whether in opposite directions to each other, or whether both series point upward or downward; so long as the
516 braces are so organized, the forces exerted by the two series shall oppose each other.

R. D. Int. 91. But if the words "oppositely inclined" are used in the sense only of indicating such a position of the two series of braces that their forces oppose each other in action, do you consider such an opposite direction to be material or immaterial?

A. I consider it absolutely material, and you then have the double braces of the Hall patent.

(Recross by Mr. BEACH:)

R. X Int. 92. And if one set of this series of double braces were secured at right angles to the standard, and the other series inclined at an angle to them, their forces would be in opposition, within the meaning of your last answer, would they not?

A. Yes, most assuredly.

JOHN A. COLEMAN.

Subscribed and sworn to before me, this 20th day of November, A. D. 1888.

E. E. MARVIN,
Master pro hac vice.

Mr. MOFFET, a witness produced on the part of complainant, sworn and examined by Mr. TUCKER:

Int. 1. What is your name, age, residence and occupation?

A. My name is Frank H. Moffet; my age is 20 years; I reside in New York city, and I am the book-keeper for the Household Sewing Machine Company.

Int. 2. Are you acquainted with the defendants in this case, or either of them?

A. I am with Mr. William H. Knapp.

Int. 3. Please state whether, during the month of September last, you purchased any skirt or dress form of defendants, and if so, when and at what place?

517 A. I purchased three skirt forms, on the 15th of September last, at Mr. Knapp's office, Fulton street, New York city.

Int. 4. Please give such description as you can of the skirt forms so purchased.

A. I do not know how to describe them unless to say they were skirt forms like the Hall form, the size being regulated by tapes and they were operated by a screw at the top, instead of thumb-screws.

Int. 5. Do you see such a form present as those which you bought?

A. I do.

Int. 6. Which is it?

A. That form there, which is marked Defendants' Form C.

Int. 7. Did you have any conversation with Mr. Knapp at the time of this purchase, and if so, please state it?

A. Yes, sir; I had some. He told me about the sale of the form. He told me he had reduced the price in order to drive out the Hall form. He also said something in regard to an injunction against the Domestic Company and that purchasers of his form need not be alarmed as he would protect them, or what amounted to the same thing.

Int. 8. What did you pay Mr. Knapp for said forms?

A. $6 for the three, I am sure, was the price.

(Cross-examined by Mr. BEACH:)

X Int. 9. For whom did you buy the forms in question?

A. For Mr. R. D. Andrews.

X Int. 10. Did you have any conversation with Mr. Andrews or anybody else before you went to Mr. Knapp's office, as to what price you were expected to pay for the forms?

A. The only conversation was, Mr. Andrews gave me the money, I don't know exactly how much it was, and told me to go down and purchase the forms and there was something said about a discount, but I do not remember what it was now.

X Int. 11. What is it you don't remember; what the conversation was, or what the discount was?

A. In regard to the discount.

X Int. 12. Well, what was the conversation?

518 A. That was all the conversation there was, as I have already said.

X Int. 13. Then the facts are that there was a conversation about a discount and you don't remember what the conversation was nor what the discount?

A. Yes, sir, that is so, the conversation in regard to the discount.

X Int. 14. Is your memory pretty good for conversation?

A. Generally.

X Int. 15. Then I suppose you remember something more about the conversation with Mr. Knapp, do you not?

A. Well, what I have already stated is about all I can remember at the present time. I did not know for what purpose the forms were for; I thought they were to be used in our store.

X Int. 16. You do remember, don't you, that there was some conversation with Mr. Knapp, which you have not stated, although you may not recall what that conversation was?

A. Yes, sir, there might have been.

X Int. 17. Don't you remember that there was?

A. Yes, I remember that we had more conversation, but just what it was I cannot recall at the present time.

X Int. 18. You say that you did not know for what purpose the forms were for at that time; do you know now?

A. Well, I did not know who they were for.

X Int. 19. Do you know what they were for?

A. The exact purpose, no, I don't know.

X Int. 20. What is your general idea of their purpose?

A. Well, I don't know exactly what it was for.

X Int. 21. I don't ask you exactly.

(Complainant's solicitor objects to the question. The witness can be asked what he did, and as to the conversation, which he held with the plaintiff or with Mr. Knapp, or anything so connected with the question as to be a part of the *res geste*.

Defendants' solicitor withdraws the question.)

X Int. 22. You say you thought the forms were to be used in your store. Were they not used in your store?

519 (Plaintiff's solicitor objects to the question as immaterial. Question admitted.)

A. No, sir.

X Int. 23. What became of them?

A. I took them to the office of the Hall Form Company.

X Int. 24. By whose directions did you take them there?

A. Mr. Andrews'.

X Int. 25. Did you have any conversation with anybody in charge of the Hall Form Co.'s place, and if so, with whom?

A. I had a conversation with Mr. Appleton.

X Int. 26. Respecting your purchase of these forms?

A. Well, nothing more, than I gave him the forms and he thanked me for delivering them, that is all.

X Int. 27. That is all the conversation you had with him at that time on this general subject?

A. That is all.

X Int. 28. You are sure of that, are you?

A. Quite sure.

X Int. 29. What induced you to enter into any conversation with Mr. Knapp, about the sale of his forms?

A. Well, he kept on and told me, I did not ask him any questions whatever.

X Int. 30. Did you make any reply to his statements?

A. I don't remember whether I did or not. I may have replied.

X Int. 31. Your part in the conversation with him is included in that part of the conversation which you recollect you have forgotten, is it not?

A. Yes.

X Int. 32. When you started out to go to Mr. Knapp's office, where did you start from?

A. From the office of the Household Sewing Machine Co.

X Int. 33. Did you stop anywhere on the way?

A. I did not.

X Int. 34. How long after this purchase of yours took place, did you first relate the circumstance to anybody?

A. The same day.

X Int. 35. To whom?

A. Mr. Andrews.

520 X Int. 36. How long afterwards was it that you made an affidavit about the transaction?

A. I really don't remember how long.

X Int. 37. Mr. Andrews told you when you started out to go to Mr. Knapp's office, to take the forms to the office of the Hall Form Co., did he?

A. No, sir; he did not.

X Int. 38. Then Mr. Andrews went with you, did he?

A. No, sir.

X Int. 39. It was after the purchase of the forms then, was it, that he directed you to take them to the office of the Hall Form Co.?

A. Yes, sir.

FRANK H. MOFFET.

Subscribed and sworn to before me this twentieth day of November, A. D. 1888.

E. E. MARVIN,
Master pro hac vice.

NEW YORK, *Nov.* 21, 1888.

Accounting continued.

Present, Messrs. Perkins and Tucker for complainant, and Messrs. Dane and Beach for defendants.

(Cross-examination of Mr. WALLACE NORRIS, continued by Mr. BEACH:)

(Mr. Norris states that when he answered Int. 20, he had in mind August, 1887, instead of August, 1888, as mentioned in the interrogatory, and that his answer would be correct if the interrogatory were changed in that respect.)

X Int. 57. Have you recommended your Everett Complete Form or the Everett Dress Form, without the bust to fit dresses or skirts upon?

521 A. Certainly, I have recommended it for all purposes for which such things are applicable.

X Int. 58. And would you say that forms like Defendants' Complete Dress Form and like Exhibit Defendants' Skirt Form, were suitable for that purpose?

A. I would.

X Int. 59. Do you find that forms like Exhibit Peerless sell freely in market?

A. Yes, sir; exceeding my most sanguine expectations, thus far.

(Redirect by Mr. PERKINS:)

R. D. Int. 60. In stating that the sales of forms were 11,000 in 1883, did you mean that you manufactured them all yourself, if not, what portion of them were manufactured by others; where and in what part of the country sold?

(Defendants' counsel states that he regards the question as objectionable, as not germane to the cross-examination, but will not insist on the objection.)

A. I did not mean that they were all manufactured by myself, here in New York, or at *at* my manufactory. They were made, in part, at Detroit, under an agreement of royalty, also at San Francisco, under a similar agreement. Nearly, or quite, 20 per cent. of the 11,000 were manufactured at these two places, and they were sold in the West, Northwest and Southwest.

R. D. Int. 61. Were all the forms, that were personally manufactured by you in 1883, sold in this country?

A. No, sir.

R. D. Int. 62. What portion of them were sold elsewhere?

A. I think that between 25 and 30 per cent. were sold for export. They were sent by the dozens all over the world; they were advertised in that way. They were placed on exhibition at the great Australian exposition, where they received the first award and thus became pretty well known.

R. D. Int. 63. How many of the Everett forms, manufact-
522 ured by others than yourself, were sold east of the Mississippi? State of your own knowledge.

A. I can't answer that question. I have no idea; the sales of the San Francisco manufacturer were supposed to be confined to that territory west of the Mississippi river. Of the Detroit party the sales were to be not only west of the Mississippi, as far as the mountains, but eastward, southward, northward and eastward. I do not mean to include the Middle and Eastern States.

R. D. Int. 64. State whether, or not, the proportion of forms made in 1884 and 1885, by others than yourself, was the same as in 1883?

A. I think so.

R. D. Int. 65. State whether, or not, the proportion made for export was the same in 1884 and 1885, as in 1883?

A. Quite a good many less, I think.

R. D. Int. 66. State how many less, if you know, comparatively?

A. I cannot answer that question, with any degree of definiteness; I can only say that the decrease for export was but a slight diminution.

R. D. Int. 67. What about the proportion of the Everett forms, made and sold in the period beginning January, 1886, and ending when the Peerless was put on the market in the summer of 1887, which was made by others than yourself and was exported?

A. No one exported any but myself and the other part of the question has been answered.

R. D. Int. 68. What proportion of the forms, made by you, were exported in the period mentioned in the last interrogatory?

A. My answer is the same as about 1884 and 1885; there was a slight falling off in those made for export.

R. D. Int. 69. What proportion of the Everett forms was made by others than yourself in the period mentioned in R. D. Int. 67?

A. I do not know, for that period, very few, however; other figures having been put on the market, having seriously affected their sales.

R. D. Int. 70. What proportion do the sales of the Peerless since August, 1888, bear to the sales of the forms like the Everett
523 complete form and Everett form, made since that time?

A. I cannot answer that question with positive exactness, as, on account of sickness, my books have not been written up since July last; but it can be answered with sufficient exactness for all practical purposes when I say that we sell from twenty to twenty-five times as many of the Peerless as of the old form; that it is rather an exception now to sell one of the old forms.

(Recross-examined by Mr. BEACH:)

R. X Int. 71. Your last answer refers to the present condition of your trade, doesn't it?

A. Certainly.

R. X Int. 72. Do you feel that, with the aid of the Peerless form, you are now regaining some of the ground which you say you lost because of other figures being put upon the market, which seriously affected the sale of the Everett?

A. Absolute necessity led to the invention of the Peerless. A great deal of time and money, by way of experiment, were expended on it in order to bring it to the state of perfection in which it was patented, and it was placed upon the market feeling assured, by all testimony from all who had seen or used it, that it was the most nearly perfect form that had ever been made, or would be likely to be made, and the sale of it has been pushed in great confidence, expecting to regain lost ground and supersede the sales of any other forms.

R. X Int. 73. I gather from your answer to X Int. 59, that your expectations in this regard have not been disappointed; is that so?

A. That is correct.

R. X Int. 74. How soon after the issue of the patent, which I un-

derstand from the label on Exhibit Peerless was issued June 29, 1886, did you begin to manufacture the Peerless form?

A. We began to manufacture it at once by one-man power; and yet, as previously stated, it was not in reality placed on the market until about one year later; the intervening time being spent in experiment, improvement of patterns, and numerous minor
524 changes, all of which greatly enhanced the value of the form. During that time the demand that came for it could not in reality be supplied; although it was unadvertised, and as we suppose unknown, all prices were offered and paid for it, from $25 down to $12.

R. X Int. 75. Have you also made a skirt form like the skirt portion of the Peerless but without its bust.

A. Yes, sir; what we denominate the Peerless draper.

R. X Int. 76. How long have you made and sold such a skirt form, and state whether you still continue to make and sell such a form.

A. It was placed on the market shortly after the Peerless form and we still continue the manufacture and sale of it and hope to do so.

R. X Int. 76½. I judge from the last phrase of your last answer, that the outlook for the Peerless draper is bright; is that so?

A. I think it is better than for any other draper, although I, myself, have never been in the slightest degree an enthusiast on the subject of drapers, believing as I do firmly that the full form is worth ten times as much to any one who wants such an article, and that at least nine out of ten who purchase drapers soon come to regret that they did not purchase a full form. Such has been my experience.

R. X Int. 77. Throughout your testimony, in speaking of the Everett form and Peerless form respectively, have you intended to make any distinction between full figures and skirt forms, or have you lumped the two together where you have not expressly distinguished the skirt form as a draper?

A. I think I have lumped them.

R. X Int. 78. What has been your price for the Peerless draper since it was put on the market?

A. $6.50 each.

WALLACE NORRIS.

Subscribed and sworn to before me this twenty-first of November, 1888.

E. E. MARVIN,
Master pro hac vice.

525 Mr. JOHN W. APPLETON, recalled and examined by Mr. TUCKER:

Int. 1. Are you acquainted with the dress form marked as an exhibit in this case Complainant's Exhibit Peerless?

A. I am.

Int. 2. Where have you ever seen it, and how many of such forms have you seen?

A. I have seen them at the factory of Wallace Norris and Borchert, S. T. Tayler and W. J. Mors, all of New York city. I have seen just what has been standing on the floor, samples at each of these places.

Int. 3. Please state whether or not the Hall Complete Form has ever been sold to and by said Tayler or Mors, so far as you know.

A. S. T. Tayler has occasionally ordered a single form to be sent to some one of his customers ordering that special kind, and W. J. Mors has never sold any of the Hall Complete Forms.

Int. 4. Please state whether or not you have ever seen the Peerless at any other places than those named in the second interrogatory.

A. I have not.

Int. 5. Have you ever seen the Peerless draper, that is to say the Exhibit Peerless without the bust?

A. I have not.

Int. 6. Please state whether or not you have found, or you have met the said "Peerless" Complete Form, or "Peerless" draper, as competitors with the Hall form in the market.

A. I have not.

Int. 7. To what extent have you found Defendants' Form C competing with the Hall form, in the market, if at all?

(Defendants' counsel objects to the questions and answer, Ints. 6 and 7 and answers thereto, as not being in rebuttal of any evidence of the defendants herein, and as tending to contradict the evidence of plaintiff's witness, Norris. Questions and answers admitted, but not to contradict the witness, Norris, and exception taken.)

526 A. I have found it competing with ours in Washington, Baltimore and Philadelphia, within the last two months.

Int. 8. State whether or not you found it so competing in New York and Brooklyn, and if so, to what extent.

A. I have found it competing in New York and Brooklyn, and to an extent that several of our customers have added it to their stock, whereas before they sold only ours.

Int. 9. To what extent does it compete with the Hall form, outside of New York and Brooklyn, and in what parts of the country?

A. I have found it in Philadelphia, Washington, Baltimore, Chicago, Omaha, Kansas City, St. Paul, Milwaukee, Detroit, Toledo, Cleveland and Buffalo.

In Baltimore one of our best agents has entirely given up the sale of our form and taken the defendants'; also, in Philadelphia, where one of our customers sold our forms exclusively, he now sells defendants' exclusively.

(Defendants' counsel makes to Ints. 8 and 9 and answers same objections as to Ints. 6 and 7. Same ruling and exception.)

(Cross-examined by Mr. BEACH:)

X Int. 10. Give the names of the customers referred to in your answer to Int. 8.

A. The Smith & Egge Button-hole Attachment Company, in New York.

X Int. 11. Do you mean your answer to Int. 9 to apply to Defendants' Form C alone, or to other forms of the defendant-, in connection with it?

A. I have found Defendants' Form C, especially, competing with ours in Baltimore and Philadelphia. In the other cities defendants' full forms are also sold. I do not recall in which towns defendants' forms were sold, which were like Defendants' Form A and which that were like Defendants' Complete Form.

X Int. 12. Was Defendants' Form C, the only form defendants sold in Philadelphia or Baltimore?

A. It was not.

X Int. 13. What do you mean then by saying that Defend-
527 ants' Form C "especially compete" with yours in Philadelphia and Baltimore?

A. It deprived us of our best agent on Chestnut street, Philadelphia, and our best of all agents, in Baltimore.

X Int. 14. Since Defendants' Form C has been introduced in Philadelphia and Baltimore it has affected your business more than defendants' other styles of forms did; is that so?

A. It has.

JOHN W. APPLETON.

Subscribed and sworn to before me, this 21st day of November, 1888.

E. E. MARVIN,
Master pro hac vice.

Mr. RUEL R. APPLETON recalled and examined by Mr. TUCKER:

Int. 1. Before the defendants put forms, like Defendants' Form C, on the market, did you have any conversation with either of them in regard to what they proposed to do thereafter, with relation to making and selling dress forms like the plaintiff's? and if so, please state when and where and with whom such conversation took place, and relate such conversation.

(Objected to as not in rebuttal of any evidence of defendants. Question admitted and exception taken.)

A. Yes; some time last fall, or in the early part of this year, during a conversation had at my office in Brooklyn, N. Y., with Mr. W. H. Knapp, he stated that he intended making a form of folding skirt with red tapes, as nearly alike the Hall form as possible, for the purpose of driving the Hall out or getting what trade they had.

Int. 2. Did you afterwards have any other conversation with said Knapp in regard to Defendants' Form C? If so, when and where did it take place, and what was it?

A. Yes, I met Mr. Knapp in this office; I think it was the
528 last day of the last accounting in this case in this office, the day the witness, Johnson, was on the stand testifying. I stated to him I understood he had reduced the price of his form, meaning Defendants' Form C; that I had understood that the Domestic Co. was no longer selling it; that they had ceased selling it on account of the injunction having been issued against them. He replied: "Yes, the Domestic is no longer selling the form, and, as the injunction has nothing to do with me, or does not prevent my selling it, I have concluded to take it up myself, have reduced the price, and propose to advertise it extensively, and push the sale wherever I can."

Int. 3. Is that all that you can remember of that conversation?

A. That is all on that subject.

Int. 4. Did he say anything about the reasons why he had reduced the price?

(Objected to as leading. Question admitted and exception taken.)

A. No; I cannot recall at this time that he did say anything about that, in that particular conversation.

Int. 5. Have you had any other conversation with Mr. Knapp in regard to selling Defendants' Form C?

A. No; I cannot recall now any other conversation on that subject.

Int. 6. Did Mr. Knapp, in either of these conversations, say that he had, or was going to reduce the price, in order to drive out the Hall form?

(Objected to as leading. Admitted and exception taken.)

A. In several of his conversations with me he said he could easily drive out the Hall form, by making prices less. He was able to make a form for less money than Morss was, and at one time he asked me what effect it would have on Mr. Morss if he were to do this. I told him that I thought if it ever came to a war of extirmination he would not last long. It was not our aim to break prices, while we had every reason to believe that our patents would hold good in the suits.

529 Int. 7. Please state whether, or not, said "Defendants' Form C" has or not been in competition with the Hall Skirt Form made by the plaintiff and sold by you and to what extent and in what manner and in what places?

(Objected to as not rebuttal of defendants' evidence. Admitted and exception taken.)

A. Yes, it has been in competition, to a great extent all over this country, notably in Philadelphia, Baltimore, New York and Brooklyn; through extensive advertising, at a greatly reduced price, in the leading publications such as the Century, Harper's Bazaar and Ladies Home Journal, as will be seen by the clippings I here produce, and through circulars to the trade. This clipping I cut from

Harper's Bazaar, of November 17, 1888. The same appears in the other publications named and many others that I cannot recall.

(The complainants place in evidence the clipping produced, which is marked Knapp Advertisement.)

I also produce a sample circular, or postal card, which was sent to the trade, all over the country, many of our customers having received them and returned them to us. I put the blue pencil marks upon it.

(The complainants place in evidence the postal card produced, which is marked Knapp Circular.)

It is impossible to state the extent of damage this has caused us. It has unsettled the trade, as many believe this form C to be the same as the Hall skirt. Our customers are led to believe that we have been charging them too much and we have been called on to explain the situation to a great extent. This card is from the Butterick Publishing Co., of Chicago, headquarters in New York and the best customer that we have.

Int. 8. You say in your last answer that Defendants' Form C was advertised by the defendants at greatly reduced prices. At what prices were said forms sold by defendants, prior to said reduction, if you know?

A. They were sold at retail at $3 each and at wholesale at $2 each.

530 Int. 9. Were they then sold at retail "express paid" or not, so far as you know?

A. They were sold at retail at $3, express not prepaid, that is when they were sold by the Domestic Sewing Machine Co. Since Mr. Knapp has been selling and advertising, he advertises at $2.50 retail, express prepaid.

Int. 10. How did the prices which prevailed before said reduction, namely, $3, express not prepaid at retail, and $2, at wholesale, compare with the prices at which the plaintiff sold the Hall skirt form?

A. These are the prices at which the Hall skirt forms have always been sold and still are; these prices are the same as the Hall's.

Int. 11. How does the fact that said Defendants' Form C is sold, at retail, express paid, instead of express not paid, affect the price to the purchaser at different points?

A. Just the amount of the expressage.

Int. 12. Do you know just how much that is?

A. In some places off the railroad $1.50 in some instances, in other near-by places, 25 cents.

Int. 13. When did the Defendants' Form C first come on the market, as far as you know?

A. I think it was some time in the early part of this year.

Int. 14. Have you read or did you hear the testimony of Mr. Manchester in this case?

A. I have simply glanced over part of it. I have not read it carefully.

Adjourned to November 22, 1888—10 a. m.

NEW YORK, *November* 22, 1888.

Accounting continued.

Present, Mr. Tucker, for complainant; Messrs. Dane and Beach for defendants.

Examination of the witness R. R. APPLETON, by Mr. TUCKER, continued:

531 Int. 15. What are the principal requisites of an adjustable dress form?

A. One capable of being adjusted to any size or its full extent without a change of shape.

Int. 16. Have you or not ever seen a dress form like Exhibit Wilson Dress Form?

A. I have not and do not believe it was ever made for a dress form, at least none have ever appeared in the trade.

Int. 17. With your knowledge of the use of dress forms, is said form marked Defendants' Exhibit Wilson Form, capable of giving the desired adjustment for draping a skirt?

A. No.

Int. 18. From your knowledge of the use of dress forms and of the market, how, in your opinion, would the said Wilson form sell in competition with either the plaintiff's or defendants' forms?

A. It would not sell at all even at half price.

Int. 19. Why not?

A. Because it does not possess the adjustments that either plaintiff's or defendants' forms possess.

Int. 20. What adjustments do you refer to in your last answer?

A. Expanding adjustments for retaining the form in shape while increasing its size.

Int. 21. What feature or features in your judgment give value to the various forms of the defendants, for use and for sale?

A. The fact that they are adjustable to their full capacity, without a change of general shape and the portable features of the Folding Skirt Defendants' Form C.

Int. 22. Suppose said forms could not be adjusted in the way you say, what value would they have?

A. But little more value, if any, than the regular solid non-adjustable figures made for displaying garments in mercantile establishments.

Int. 23. Suppose Defendants' Form C was not capable of adjustment, what value would it possess as a draper?

A. Well, if it were not capable of adjustment, I think it
532 would possess but very little more advantages than an old-fashioned churn.

Int. 24. What, in your judgment, is the value of the exterior ad-

justment of defendants' form, as compared with the method of adjusting plaintiff's form?

A. I think it is of but little more value than plaintiff's method, perhaps it is a little more convenient, but as a matter of fact, in common use, the form is adjusted to its proper size before the garment is placed over it and therefore an exterior adjustment is of no practical value.

Int. 25. What value, if any, do you think the fact that the form is capable of being adjusted from the top, instead of internally, has as a means of inducing the public to purchase it?

A. I don't think it has any value, as a customer would not buy a form simply because it had an exterior adjustment.

Int. 26. Are you familiar with the castings which have the dates of the patents and were used on the wood posts, during the period of the accounting and which were spoken of in the testimony of Mr. Everett Morss, which is printed on page 182 of the printed record?

A. I am familiar with it.

Int. 27. Have you one of said castings at present, and will you produce it?

A. I have, and here produce it.

(Complainaat's solicitor offers in evidence the casting produced by the witness and the same is marked Complainant's Exhibit Casting.)

Int. 28. When did you first hear of the reduction of prices upon Defendants' Form C of which you have testified?

A. Along about the 12th or 13th of September last was the first time my attention was called to it, that is to their postal card or circular, quoting prices at wholesale.

Int. 29. When did you first know of the reduction of the retail price to $2 50, express prepaid?

A. It was some time after that, I cannot recall when.

Int. 30. When was plaintiff first aware of these reductions, so far as you know?

533 (Objected to because it was not the best evidence. Question admitted.)

A. So far as I know, it was when I advised him of the fact, about Sept. 12, last, that is concerning the reduction in wholesale prices to which I referred.

(Defendants' counsel moves to strike out the deposition of the witness from questions 1 to 6 inclusive, as wholly immaterial and irrelevant. Motion denied and exceptions taken.)

(Cross-examined by Mr. BEACH:)

X Int. 31. You say in answer to Int. 7 that the form Exhibit C was advertised by the defendant at greatly reduced prices. Do you find anything on either of the advertisements you have produced

and put in evidence, which states that the prices have been reduced?

A. No, the figures speak for themselves; as the wholesale price was formerly, as I have understood from Mr. Knapp himself, $24 per dozen and the retail price $3 each.

X Int. 32. There is, however, no advertisement of reduction on the exhibits you speak of, is there?

A. No, but one line reads "the following prices should be examined, in connection with the stand sample of which will be shipped for your inspection and operation." This would seem to indicate, or to call the attention of the prospective buyer that there had been a reduction. This was especially effective when mailed to my own customers who had been in the habit of paying $24 per dozen for my skirts.

X Int. 33. Do you mean the skirts which you bought from the plaintiff by the phrase, "my skirts"?

A. Yes.

X Int. 34. When was it that you understood from Mr. Knapp what his price for goods like Exhibit C, was?

A. I cannot recall just when that was.

X Int. 35. Can you recall in what connection he gave you that information?

A. No, I can't; only I knew further from his own quota-
534 tions and from talking with persons that have bought of him or the Domestic Sewing Machine Co., that the price had been $24 a dozen. This card shows the price of a single dozen was $24.

X Int. 36. That corresponds with your previous information, that you have been testifying about, does it?

A. I don't understand the question.

X Int. 37. Please read it carefully, and make such reply as you are able.

A. The information that I have, as to reduction of price at wholesale, is shown by the postal card offered in evidence, $18 per dozen, for five dozen lots; $21 a dozen, for two dozen lots, and $24 a dozen for one dozen.

X Int. 38. What persons have you talked with who bought figures like Exhibit C from Mr. Knapp at a higher price than $24 a dozen?

A. I have not talked with anybody, that I remember.

X Int. 39. What quotations of Mr. Knapp have you seen which quoted forms like Exhibit C, in one dozen lots, at a higher price than $24?

A. I have not seen any, to my knowledge.

X Int. 40. What persons do you know of who ever bought single forms, like Exhibit C, directly from Mr. Knapp, excepting Mr. Moffet?

A. I do not know of any one except what I heard of.

X Int. 41. When do I understand you to say that Exhibit C was first put on the market to your knowledge?

A. I think it was some time in the early part of this year.

X Int. 42. What makes you think it was the early part of the year?

A. Because it appeared shortly after he told me he was going to bring it out, and showed me a sample of it in his own office in the presence of Mr. Everett Morss.

X Int. 43. When was that?

A. I think it was the early part of the year.

X Int. 44. Now I ask you again, what makes you think it was in the early part of the year?

A. Because it was cold weather, rainy, slushy, snowy weather. I could not tell whether it was the last part of 1887 or the
535 first part of 1888. The samples might not have been exactly like the form C as it now appears, but it was on the same principle. He, at the same time, showed us the little skirt which now sells at $1.25 retail.

X Int. 45. Who sells the little skirt at $1.25 retail now, to your knowledge?

A. Henry Bristow.

X Int. 46. How lately have you known of his making sale of such a skirt at $1.25?

A. I have not as a matter of fact seen him sell any. They are advertised in his show window at that price by a conspicuous placard which can be read across the street.

X Int. 47. When you speak in your answer to Int. 9 of "our customers" whose customers do you mean?

A. I mean my customers.

X Int. 48. Will you name some place to which the express charge from New York, which you have paid in your own experience, is as high as $1.50 for single folding-skirt forms?

A. I never prepay express charges.

X Int. 49. Do you mean to be understood in testifying, as quoting the exact language of Mr. Knapp at the respective interviews referred to in your testimony herein?

A. Yes, so near as I can recall it.

R. R. APPLETON.

Subscribed and sworn to before me this 22d day of November, A. D. 1888.

E. E. MARVIN,
Master pro hac vicè.

Complainant's rebuttal evidence closed.

Defendants' Surrebuttal.

Mr. Wm. H. Knapp recalled.

Int. 1. Have you during the period of this accounting bought dress forms of the plaintiff?

A. I have. The company of which I am a member have.

Int. 2. What price did you pay?

A. $1.50 each.

536 Int. 3. Have you any bills which were sent you by the plaintiff in the course of business and relating to such purchases, and if so, please produce them.

A. I have and I here produce them.

(Defendants' counsel offers the bills in evidence, the bills produced by witness, being nine in number to be marked Defendants' Exhibits Morss Bills, 1, 2, 3, 4, 5, 6, 7, 8 and 9 respectively.)

Int. 4. Does each one of these bills represent an actual purchase of dress forms of the kind and at the price specified in the bills, respectively?

A. They do, with one exception: yes, sir. One of the nine bills is a duplicate and is so marked.

Int. 5. Have you read or heard the testimony of R. R. Appleton regarding certain alleged conversations which he had with you, relating to Defendants' Form C?

A. I have, and no such conversation to my knowledge took place.

Int. 6. Did you ever say to said Appleton that you intended making a form of folding skirt, with red tapes, as nearly like the Hall form as possible, for the purpose of driving the Hall form out and getting what trade they had?

A. No, sir; I made no such statement.

Int. 7. Did you say to said Appleton, on or about the 10th day of September in this 1888, that you had reduced the price of forms like said Exhibit C and proposed to advertise it extensively and push its sale wherever you could?

A. No, sir; I did not.

Int. 8. Did you, or not, before entering upon the manufacture and sale of forms like Exhibit C, submit a sample of such form to your counsel and ask them to advise you whether, or not, such form was an infringement of the patent in suit?

A. I did; yes, sir, to Mr. Beach, Mr. Dane and Mr. Earle.

Int. 9. What advice did they give you on that point?

A. That the form did not infringe and that I would be in the right, that is, I would not infringe, if I manufactured and sold such figures or forms.

537 (Cross-examined by Mr. TUCKER:)

X Int. 10. Was the singular resemblance between the form C and the Hall skirt spoken of at any of the interviews between yourself and counsel, when you were seeking and obtaining advice as just testified?

A. No, sir; it was not.

X Int. 11. Was the fact commented on that the Hall form had two red tapes, that none of your previous forms had red tapes and that the form proposed had two red tapes?

A. No, sir; there was nothing said about any resemblance between the two figures.

X Int. 12. Was there anything said about the fact that your previous forms expanded by quarter sections and that the proposed form expanded by individual ribs like the Hall?

A. No, sir.

X Int. 13. Did you consult them before you started to make the form, or after you had finished the sample?

A. Both before and after.

X Int. 14. Before you began to make it did you tell them just what you proposed to make?

A. Yes, sir.

X Int. 15. Did you have an interview or interviews with Mr. Appleton at any of the times about which he has testified?

A. No, sir.

X Int. 16. And you never said to him any of the things which he has said you said to him at these interviews?

A. No, sir.

X Int. 17. What he has testified to, you mean to say, is made up out of whole cloth?

A. I mean to say it is not so; yes, sir.

X Int. 18. Do you mean absolutely to say that no such conversations took place, or, that you do not remember them?

A. I mean to say that no such conversations took place at those times or any other times.

X Int. 19. Did you show Mr. Appleton a sample of this proposed form C, as he has testified?

A. No, sir; I did not.

X Int. 20. Did you show him anything in your office, in the presence of Mr. Morss?

538 A. I showed Mr. Appleton and Mr. Everett Morss, and there was also present Mr. Hague and my brother, Mr. Charles Knapp, one evening about five o'clock, in November, 1887, some weeks after the conversation had taken place at the Astor house, already in evidence, the skirt form which has been alluded to as the $1.25 stand, and also a stand with the same movement but which had longer ribs.

The form C was not at that time invented, nor was it till the spring of 1888.

To the best of my knowledge and belief, this was the last time that Mr. Appleton and Mr. Morss, or either of them, visited the office of Knapp & Hague.

X Int. 21. Did either of the forms that you then showed Mr. Appleton have a red tape upon it?

A. No, sir; they had white tape.

X Int. 22. Did you have a Hall form present and compare the size of the boxes?

A. No, sir, I did not; the box that these figures was put into was a round box.

X Int. 23. Did you not have a Hall box present in which you put one of your forms? Not the $1.25 form but the other one?

A. No, sir.

X Int. 24. The forms you bought of Mr. Morss, you bought to sell to merchants, to be retailed by them, did you not?

A. We bought to sell to the merchants, what they did with them I don't know.

X Int. 25. You understand that Mr. Appleton became the general agent of Mr. Morss, in September, 1886, did you not?

A. All I know is what appears in the record in this case. At the

time the Union Form Company bought of Mr. Morss, the bills of which I have presented in this case, we were not given to understand that Mr. Morss had any exclusive agent, or that there were any persons to whom he sold exclusively.

WM. H. KNAPP.

Adjourned to Hartford, Nov. 27, 10 a. m.

539 *Defendants' Statement.*

E. E. Marvin, master *pro hac vice.*

NEW HAVEN, *May* 17, 1888.

In conformity with the master's order of 14th, the defendants present the following statement, to wit:

The number of dress forms made by the defendants like the Exhibit Complete Dress Form was 3,364.

The number of dress forms made by the defendants like the Exhibit Skirt Form was 2,628.

The persons to whom the same were sold and the prices received therefor, are shown in Schedule A, hereto annexed.

The profits made by the defendants from the sale of such dress forms were $1.08 per full-figure form, and 60 cents per skirt form.

The cost of manufacturing such forms appears by Schedule B hereto annexed:

SCHEDULE A.

			P. M.	Skirts.	
1886.					
Nov.	17.	E. F. Smith, m'g'r, New Haven, Ct.		4	$10 00
	18.	Plainville, Ct.		1	2 50
	19.	S. N. Ufford & Son, Boston, Mass.		12	29 00
	20.	E. F. Smith, m'g'r, New Haven, Ct.	1	2	9 50
	22.	W. G. Brown & Co., Montreal	6	----	24 00
	26.	Dow W. W'ks Co., Louisville, Ky.	6	----	27 00
	27.	Fletcher & Swarte, Newark, N. J.		12	30 00
Dec.	1.	Southern W. w'ks, Louisville, Ky.	1	----	5 00
	1.	S. N. Ufford & Son, Boston, Mass.		12	24 00
	3.	E. F. Smith, m'g'r, New Haven, Ct.	1	1	7 00
	11.	" " " "		1	2 50
		S. N. Ufford & Son, Boston, Mass.	6	----	24 00
	13.	Domestic S. M. Co., New York city	56	----	224 00
	14.	" " " "	44	----	176 00
	15.	E. F. Smith, m'g'r, New Haven, Ct.	1	----	4 50
	18.	Domestic S. M. Co., New York city		25	62 50
	20.	Hartford W. w'ks, Hartford, Ct.		1	2 50
	22.	S. N. Ufford & Son, Boston, Mass.	12	6	60 00
		Hartford W. w'ks, Hartford, Ct.	1	----	4 50
		E. F. Smith, m'g'r, New Haven, Ct.	1	----	4 50
	23.	Mrs. A. S. Newcomb, Worcester, Mass.	6	----	27 00

540

1886.					
Dec.	23.	E. F. Smith, m'g'r, New Haven, Ct.		1	2 50
	24.	" " " "	1	----	4 50
	27.	Bailey & Whitmore, Cleveland, O.	6	----	24 00
	29.	E. F. Smith, m'g'r, New Haven, Ct.	1	----	4 50
1887.					
Jan.	14.	Hartford W. w'ks, Hartford, Ct.	1	----	4 50
		S. N. Ufford & Son, Boston, Mass.	6	----	15 00
		E. F. Smith, m'g'r, New Haven, Ct.	1	----	4 50

			P. M.	Skirts.	
1887.					
Jan.	18.	Domestic S. M. Co., New York city		50	$125 00
	19.	Henry Bristow, Brooklyn	6	----	15 00
	21.	W. J. King, Geneva, N. Y.	1	----	4 50
	22.	S. N. Ufford & Son, Boston, Mass		43	107 50
	25.	Domestic S. M. Co., New York city		2	6 00
	26.	E. F. Smith, m'g'r		1	2 50
	29.	S. N. Ufford & Son, Boston, Mass.		1	2 50
		E. F. Smith, m'g'r	1	----	4 50
Feb.	3.	Knapp & Hague, agents, N. Y. city	1	1	6 50
	4.	Henry Bristow, Brooklyn	6	----	24 00
		W. G. Brown & Co., Montreal	6	----	24 00
	5.	William Strauss, Philadelphia, Pa.	12	----	48 00
	10.	Domestic S. M. Co., New York city	25	----	100 00
	15.	Hartford W. w'ks, Hartford, Ct.	6	----	27 00
	16.	Domestic S. M. Co., New York city	50	25	262 50
	17.	H. Bristow, Brooklyn, N. Y.		6	15 00
	19.	S. N. Ufford & Son, Boston, Mass.		12	30 00
		W. G. Brown & Co., Montreal, Can.		6	15 00
	22.	E. F. Smith, m'g'r, New Haven, Ct.	1	1	7 00
	23.	J. Wanamaker, Philadelphia, Pa.	50	----	212 50
	26.	Ufford & Son	12	----	48 00
	28.	E. F. Smith, m'g'r		1	2 50
M'ch	1.	" "		1	2 50
		Blackwell & Hounan	6	6	45 00
		" "	6	6	45 00
	2.	Domestic S. M. Co., New York city	50	14	235 00
		H. Bristow, Brooklyn, N. Y.		6	15 00
	4.	E. F. Smith, m'g'r, New Haven, Ct.		1	2 50
		Bristow, Brooklyn, N. Y.	12	12	78 00
	5.	Domestic S. M. Co., New York city		16	40 00
		J. Snow, Rochester, N. Y	6	----	27 00
	8.	Ludlow, Saylor Co., St. Louis, Mo.	6	----	27 00
		W. G. Brown & Co., Montreal, Can.	6	----	24 00
	11.	E. F. Smith, m'g'r	1	----	4 50
	12.	H. Bristow, Brooklyn, N. Y.		12	30 00
	14.	W. G. Brown & Co.	6	6	36 00

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1887.					
M'ch	14.	E. F. Smith, m'g'r	1	----	4 50
	15.	" "		1	2 50
		Domestic S. M. Co., Baltimore, Md.	6	6	39 00
	18.	H. Bristow, Brooklyn, N. Y.	12	----	48 00
	19.	S. N. Ufford, Boston	8	----	32 00
		Domestic Co., New York city	1	30	66 50
		E. F. Smith, m'g'r	1	2	9 50
	23.	Hartford W. w'ks	1	----	4 50
		E. F. Smith, m'g'r		1	2 50
	26.	Ufford & Son	17	----	68 00
		Bailey & Whitmore, Cleveland	12	----	48 00
		Hartford W. w'ks	6	----	27 00
		E. F. Smith, m'g'r		2	5 00
	29.	Drefur & Co., Baltimore, Md.	6	----	27 00
		Fletcher & Swart		6	15 00
		W. Murphy, Philadelphia, Pa.		----	48 00
	30.	Domestic Co., New York city	50	----	200 00
		Ufford & Son	1	----	4 00
	31.	E. F. Smith, m'g'r	1	----	4 50
April	5.	Domestic Co., New York city			30 00
		E. F. Smith, m'g'r	1	1	7 00

			P. M. and wire forms.	Skirt forms.	
1887.					
April	7.	Mrs. M. C. Watson, Providence, R. I.	6	----	$24 00
		Ufford & Son, Boston, Mass.		6	15 00
		H. Bristow, Brooklyn, N. Y.		6	15 00
		"Domestic" Co., New York city		6	15 00
	9.	Mrs. M. C. Watson		12	30 00
		H. Bristow, Brooklyn, N. Y.		6	15 00
		Fletcher & Swart, Newark, N. J.		6	16 00
	11.	"Domestic" Co., New York city		7	17 50
		J. M. Moffart, Pittsburgh, Pa.	6	----	24 00
	12.	"Domestic" Co., New York city	37	25	210 50
		H. Bristow, Brooklyn, N. Y.		12	30 00
		Fletcher & Faulkner, Newark, N. J.	12	----	54 00
		J. J. Hollister, Washington, D. C.	6	----	24 00
	13.	Ufford & Sons		3	7 50
	16.	Bailey & Whitmore, Cleveland	12	----	48 00
	19.	"Domestic" Co., New York city		12	30 00
	20.	E. F. Smith, manager, New Haven, Conn.	1	2	9 50
	21.	Ufford & Son, Boston		20	50 00
	22.	H. Bristow, Brooklyn	25	----	200 00
542					
1887.					
April	22.	Fletcher & Faulkner, Newark	6	----	27 00
	25.	J. Wanamaker, Philadelphia, Pa.	50	----	212 50
		H. Bristow, Brooklyn		11	27 50
		W. G. Brown & Co., Montreal		6	12 00
		Bailey & Whitmore, Cleveland	1	12	34 00
	27.	"Domestic" Co., New York city	50	----	200 00
	29.	"Domestic" Co., New York city		10	25 00
		E. F. Smith, m'g'r	1	1	7 00
	30.	Murphy & Ulrich, Philadelphia, Pa.	5	----	22 50
May	3.	J. S. Chadwick, Los Angeles, Cal.	12	----	48 00
		E. F. Smith, m'g'r		1	2 50
		J. K. Fennell, Philadelphia, Pa.	12	----	54 00
		E. F. Smith, m'g'r	1	----	4 50
	6.	E. F. Smith, m'g'r		5	12 50
	7.	Ufford & Son	25	----	100 00
		"Domestic" Co., New York city		24	60 00
		J. Snow, Rochester	6	----	27 00
		H. Bristow, Brooklyn	1	6	19 00
	9.	"Domestic" Co., New York city	50	----	200 00
	10	E. F. Smith, m'g'r	1	----	4 50
	11.	Murphy & Ulrich, Philadelphia, Pa.	7	----	29 77
		E. B. Jordan, " " "	6	----	24 00
	13.	Edward Newell, Buffalo, N. Y.	6	6	39 00
		Ufford & Son, Boston		5	12 50
	19.	E. F. Smith, manager, New Haven, Conn.	1	3	12 00
		"Domestic" Co., New York city		20	50 00
		" " Baltimore	6	----	24 00
	20.	E. F. Smith, manager, New Haven, Conn.		2	5 00
		Ufford & Son, Boston		12	50 00
		H. Bristow, Brooklyn		9	22 50
		Fletcher & Faulkner		12	30 00
	21.	Murphy & Ulrich		12	36 00
		J. K. Fennell		12	36 00
	26.	"Domestic" Co., New York city	37	50	273 00
	27.	Fletcher & Faulkner	6	12	52 44
		"Domestic" Co., Albany		12	29 04
	30.	C. F. Fiske, Baltimore	1	----	5 00
		E. E. Adriance, Poughkeepsie	1	1	6 50
		L. Griswold, Springfield	1	3	11 50
June	3.	"Domestic," New York city		12	30 00
		Louisville Fair Co., Louisville		12	30 00

			P. M. and wire forms.	Skirt forms.	
1887.					
June	3.	Mrs. Watson, Providence		12	$30 00
	4.	S. N. Ufford, Boston	1	8	24 00
543					
1887.					
June	4.	J. G. Grotty, New York city	1	1	$6 50
		"Domestic," New York city	50	----	200 00
	6.	" Ft. Jones, Cal	1	----	4 00
		W. G. Brown & Co., Montreal, Can		12	30 00
		Domestic, Leavenworth, Kan	1	1	6 50
	8.	" New York city	10	40	147 50
	9.	" " "		1	2 50
		" Boston	1	1	6 50
		T. S. Waite, Newport, R. I	1	1	9 00
		M. Hager, Lawrence, Mass	3	3	19 50
		Domestic, New York city	1	2	9 00
		" " "	2	2	13 00
	11.	" " "	14	31	133 50
	14.	" " "	1	3	11 50
		" " "		12	30 00
		" " "	1	3	11 50
		" " "	1	1	6 50
		" " "	1	3	11 50
	15.	" " "	24	----	96 00
		" " "	6	6	39 00
	16.	" " "		6	15 00
		" " "	12	19	95 50
		" " "	1	2	9 00
		" " "	1	3	11 50
	18.	S. N. Ufford, Boston	6	5	42 00
		Domestic, New York city	1	1	6 50
		" " "	1	1	6 50
	20.	" " "	1	1	6 50
		" " "	1	1	6 50
		" " "	1	1	6 50
		" " "	1	1	6 50
		" " "	1	1	6 50
		" " "	1	1	6 50
		" " "	1	1	6 50
		" " "	1	1	6 50
	21.	" " "	1	1	6 50
		" " "	1	1	6 50
		" " "	1	1	6 50
		" " "	1	1	6 50
		" " "	1	2	9 00
		" " "	1	2	9 00
	22.	S. N. Ufford, Boston	19	20	145 50
	21.	Domestic, New York city	1	----	4 00
544					
1877.					
June	22.	Domestic, New York city	1	3	11 50
		" " "	1	3	11 50
		" " "	1	3	11 50
		" " "	1	3	11 50
		" " "	1	3	11 50
		S. N. Ufford, Boston	25	25	162 50
	25.	Domestic, New York city	50	----	200 00
		" " "	1	3	11 50
		" " "	1	3	11 50
		" " "	1	3	11 50
		" " "	1	3	11 50
		" " "	1	2	9 00
	29.	" " "	1	2	9 00
		" " "		50	125 00

			P. M. and wire forms.	Skirt forms.	
1877.					
June	29.	Domestic, New York city		6	$15 00
		" " "	6	8	44 00
		" " "		6	15 00
		" " "	1	3	11 50
		" " "	1	2	9 00
	30.	" " "		50	125 00
July	6.	" " "	9		36 00
	7.	" " "	55	16	260 00
	11.	" " "	17	3	75 50
	12.	" " "	5	11	47 50
	14.	" " "	6	11	51 50
	15.	" " "	1	1	6 50
	20.	E. F. Smith, New Haven, Ct.		4	10 00
		Domestic, New York city	59	58	381 00
	21.	" " "	4		16 00
	29.	" " "	4	4	26 00
		" " "	6	7	41 50
	30.	" " "	1	2	9 00
Aug.	6.	" " "	7		28 00
		" " "	6		24 00
		" " "		2	5 00
	8.	" " "	1	3	11 50
	11.	" " "	75		300 00
	15.	" " "	12	50	173 00
	16.	" " "	50		200 00
	18.	" " "	11		44 00
	19.	" " "	1		4 00
	25.	" " "	2	4	18 00
	31.	" " "	1	2	9 00

545

1887.					
Sept.	1.	Domestic, New York city	96		384 00
	7.	" " "	3		12 00
		" " "	1	2	9 00
	10.	" " "	1		4 00
		" " "	2	2	13 00
		" " "	2	2	13 00
		" " "	3	3	19 50
		" " "	1		4 00
	13.	" " "	1	2	9 00
	14.	" " "	4	3	23 50
	15.	" " "	2		8 00
		" " "	100	100	650 00
	26.	" " "		1	2 50
	28.	" " "	106	14	459 00
	29.	" " "		4	10 00
		" " "	3	2	17 00
	30.	" " "	2	4	18 00
		" " "	5	6	35 00
		" " "	1	2	9 00
		" " "	6		24 00
	23.	" " "	12	3	55 50
Oct.	3.	" " "	2	25	162 50
	7.	" " "	6	8	41 00
		" " "	4	3	23 50
	10.	" " "	12	12	78 00
		" " "	2	1	10 50
	11.	" " "	100		400 00
	13.	" " "		100	250 00
		" " "	3		12 00
	15.	" " "	3		12 00
		" " "	9	6	51 00

			P. M. and wire forms.	Skirt forms.	
1887.					
Oct.	21.	Domestic, New York city	15	3	$67 50
		" " "	7	2	30 00
		" " "		3	7 50
	22.	" " "	84	100	586 00
	24.	H. Bristow, Brooklyn, N. Y.		25	62 50
	26.	Domestic, New York city	14	12	86 00
		C. F. Fiske, Baltimore, Md.	24	6	126 00
		J. G. Blaisdell, Baltimore, Md.	6	6	45 00
		H. Bristow, Brooklyn, N. Y.	25	----	100 00
Nov.	1.	"Domestic," New York city, "special,"	12	----	60 00
	3.	" " "	1	5	16 50
		" " "		1	2 50
546					
1887.					
Nov.	8.	"Domestic," New York city	1	6	19 00
		" " "	12	6	63 00
	3.	Manchester, Robertson & Allison, St. John, N. B.	3	----	12 00
	9.	Jordon & Gotch, London, Eng.	7	6	43 00
	16.	Domestic, New York city	1	----	4 00
	19.	" " "	2	2	13 00
	21.	" " "	1	1	6 50
		Domestic, Fennell, Murphy & Ulrich, New York city	24	----	96 00
		Domestic, Wanamaker, N. Y. city	12	----	48 00
	9.	Domestic, New York city	25	25	162 50
	21.	Domestic, R. C. Rickel, M. A. Luft, New York city	7	25	90 50
	22.	Domestic, New York city		2	5 00
		" " "	3	8	32 00
	26.	" " "	3	4	22 00
		H. Bristow, Brooklyn, N. Y.	50	50	325 00
Dec.	1.	"Domestic," New York city	100	----	400 00
	6.	" " "	4	2	21 00
	9.	" " "	3	3	19 50
	17.	E. F. Smith, New Haven, Ct.	3	----	10 50
	20.	Domestic, New York city		6	15 00
		" " "		3	7 50
	29.	" " "	100	----	400 00
		" " "		100	250 00
1888.					
Jan.	5.	Domestic Co., New York city	2	----	8 00
1887.					
Oct.	29.	C. F. Fiske, Baltimore, Md.	24	6	111 00
1, 5, '88.		E. F. Smith, New Haven, Ct.		3	7 50
11, 30, '87.		S. Oppenheimer & Co., Washington, D. C.	6	6	39 00
10, 27, '87.		Mrs. M. C. Watson, Providence, R. I.	25	25	162 50
10, 29, '87.		J. G. Blaisdell, Baltimore, Md.	6	6	39 00
11, 30, '87.		Drefur & Co., Baltimore, Md.	3	----	12 00
1888.					
Jan.	3.	E. F. Smith, New Haven, Ct.		3	7 50
	13.	George Lane, Newton, Mass.		4	10 00
	14.	J. G. Blaisdell, Baltimore, Md.	4	12	54 00
	18.	L. T. Robinson, Salem, Mass.		4	10 00
		C. Hallett, South Boston, Mass.	2	2	13 00
	19.	"Domestic," Co., New York city	100	----	400 00
	21.	E. P. Copeland, Northampton, Mass.	1	1	6 50
547					
1888.					
Jan.	31.	Domestic Co., Boston, Mass.	6	4	34 00
Feb.	7.	Bailey & Whitmore, Cleveland, O.	12	----	48 00

			P. M. and wire forms.	Skirt forms.	
1888.					
Feb.	7.	J. B. Clark, New Haven, Ct.	1	----	$6 00
1, 14, '88.		J. G. Blaisdell, Baltimore, Md.	4	12	46 09
Feb.	9.	Domestic Co., New York city	50	----	200 00
	10.	N. P. Garrison, Indianapolis	1	3	11 50
	13.	Domestic Co., New York city		50	125 00
		W. Barr, Dry Goods Co., St. Louis, Mo.	6	6	39 00
	16.	Domestic Co., Boston, Mass.	6	3	31 50
		F. S. Waite, Newport, R. I.		3	7 50
		M. E. Hartzler, York, Pa.	3	4	22 00
		Mrs. E. Gartland, Philadelphia, Pa.	6	----	24 00
		E. F. Smith, New Haven, Ct.	1	----	4 00
	18.	Hartford W. W'ks, Hartford, Ct.	1	----	2 50
	20.	E. B. Chase, New Bedford	3	----	12 00
	22.	J. G. Blaisdell, Baltimore, Md.			
	24.	H. C. Plafflin, Cincinnati, O.	2	----	8 00
		" " "	6	----	24 00
	23.	Domestic Co., New York city	----	50	125 00
	24.	" " "	4	3	23 50
	27.	" " "	100	----	400 00
M'ch	1.	H. Bristow, Brooklyn	18	----	72 00
		C. F. Messner, Dayton, O.	3	----	12 00
		J. G. Blaisdell, Baltimore, Md.		9	22 50
	3.	H. Bristow, Brooklyn	6	----	24 00
	7.	L. Saylor W. Co., St. Louis, Mo.	6	----	24 00
		Cumner & Bell, Worcester, Mass.	3	----	12 00
	6.	H. Bristow, Brooklyn, N. Y.		24	60 00
		Domestic Co., New York	50	----	200 00
	8.	Murphy & Ulrich, Philadelphia, Pa.	12	6	63 00
		E. G. Tyler & Co., Lynn, Mass.	8	6	47 00
	7.	E. F. Smith, New Haven		2	5 00
	12.	" "		3	7 50
	19.	Domestic Co., Baltimore, Md.		12	30 00
	20.	J. J. Hollister, Washington, D. C.		12	30 00
	22.	Domestic Co., New York		100	250 00
	26.	W. Hager & Co., Lawrence, Mass.	3	3	19 50
	27.	A. P. Garrison, Indianapolis	6	3	31 50
	30.	"Domestic" Co., New York		100	250 00
April	2.	Mrs. M. C. Watson, Providence, R. I.		12	30 00
		Brown & O'Connor, Fall River		6	15 00
	3.	"Domestic" Co., Baltimore, Md.		12	30 00
	5.	Brown & O'Connor, Fall River		6	15 00

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1888.					
April	6.	Bailey & Whitmore, Cleveland, O.		12	30 00
		"Domestic" Co., Kansas City	12	6	63 00
	6.	Taylor & Dean, Pittsburg, Pa.		6	15 00
	7.	E. P. Copeland, Northampton, Mass.	2	----	8 00
		W. H. Day, Westfield, Mass.	1	----	4 00
		Miss C. F. Boyton, Lowell, Mass.	2	2	13 00
	9.	"Domestic" Co., New York	100	----	400 00
	7.	J. J. Hollister, Washington, D. C.	6	----	24 00
		"Domestic" Co., Baltimore, Md.		12	30 00
	13.	W. Barr, D. G'ds Co., St. Louis, Mo.	6	----	24 00
	14.	"Domestic" Co., Baltimore, Md.	10	----	40 00
		E. W. Clark, Jamaica Plains		4	10 00
		Cumner & Bell, Worcester	3	3	19 50
		C. Hallett, South Boston	3	----	12 00
	10.	E. F. Smith, New Haven, Ct.	4	2	21 00
	16.	H. C. Plafflin, Cincinnati	12	----	48 88
	17.	Taylor & Dean, Pittsburg, Pa.	12	6	63 00
	13.	"Domestic" Co., New York city	70	----	280 00
	16.	E. F. Smith, New Haven	1	----	4 00

Recapitulation.

Total number of full-sized forms with papier-maché and wire busts, made from November 16, 1886, to April 20, 1888	5,364
Total number of skirt forms made from November 16, 1886, to April 20, 1888	2,628
Total amount received from sale of full and skirt forms from November 16, 1886, to April 20, 1888	$20,303 75

SCHEDULE B.

Skirt.

Wire for skirt	11.4
Band iron	11.2
Solder	1
Malleable iron, 2 lbs.	21
Base and pipe	35
Rod	6
Brass pipe	11.3
Bronze and liquid	8
Crate	20
	124.9
549	
$3.00 per day man will make 12 skirts complete	25
$3.00 " " " 11 " "	28
$1.25 " " crate and bronze 12 skirts complete	10
General expense	02
	65
Total	189.9 = 190

Cost of Full Figure.

Wire, 1½ lbs., 7⅜ per lb.	11.4
Band iron, 1¾ lbs., 6¼ per lb.	11.2
Solder	01
Malleable iron, 3 lbs., 10½ per lb.	31.5
Base and pipe	40
Rod	08
Brass pipe, ⅝ lbs., 34 per lb.	22.5
Paper	08.0
Wadding	01.0
Cloth, 7½ c., per yard	07.5
Bronze and liquid	10.0
Crate	20.0
Wire for bust	02
	174.1
$3.00 per day man will make 6 per day; wire and setting up	50
$3.00 " " "	56
$1.25 " " crate 12 per day	10
General expense per figure	02
	118
Total	292

And on the 25th day of February, 1889, report of master and committee was filed in the words and figures following, viz:

550 United States Circuit Court, District of Connecticut.

CHARLES A. MORSS
vs.
UNION FORM COMPANY. } No. 316. Law.

JOHN HALL, for CHARLES A. MORSS,
vs.
WM. H. KNAPP *et al.* } No. 336. Law.

Committee's Report.

CHARLES A. MORSS
vs.
WM. H. KNAPP *et al.* } No. 538. In Equity.

Master's Report.

551 To the judges of the circuit court of the United States for the district of Connecticut:

The undersigned, appointed a committee as to the case of Charles A. Morss *vs.* Wm. H. Knapp *et al.*, No. 316, law, and the case of John Hall, acting for Charles A. Morss, *vs.* Wm. H. Knapp *et al.*, No. 336, law, and as master in chancery in the case of Charles A. Morss *vs.* Wm. H. Knapp *et al.*, No. 538, in equity, all pending in said circuit court, having all three of said cases together and upon the stipulations of the respective parties that all the proofs taken shall be considered to be taken and filed in each and all of said causes so far as the same may be competent and relevant, respectfully submits the following report and returns therewith the proofs taken to be filed in said three causes:

It appears from the evidence and is found as a fact that during the period covered by the decree in the last-named suit, viz., from the 16th day of November, 1886, to the 20th day of April, 1888, the defendants have made and sold dress forms like Defendants' Complete Form and Defendants' Skirt as follows, viz:

Complete form, 3,364.

Skirt form, 2,628.

I find both these forms contain the expanding device of the second claim of the plaintiff's patent in suit. Of the skirt it supplies the chief element of the structure and gives to it its value as a marketable article.

It does not appear by the evidence that solid skirts of such form have or ever did have any considerable sale or great market value, but for skirts adjustable in a greater or less degree to the human form it does appear that there is a large and increasing demand for the purposes of draping and fitting of garments.

The adjustable device employed as to these particular skirts belonged to the complainant and was embodied in them by the de-

fendants for the purpose of giving them sale and did in fact sell them.

552 The defendants superadded to the complainant's invention in suit a firmer waist, a substantial foot on castors; also a very simple, convenient, and valuable device for operating the expanding mechanism of it, consisting of a slow-threaded screw on the central rod, rotated or operated by a handle or knob at the top of the form, whereby the mechanism of the plaintiff's patent could be conveniently expanded to fit any form and at all stages of the adjustment be securely and firmly locked and held in position and in proper form. This device was an improvement for the operation of the plaintiff's device, which as organized in plaintiff's skirt operated by hand and with considerable inconvenience and required to be locked and held at all points desired by the use of several set-screws. The plaintiff's device was more valuable with this improvement added to it than without it, and defendants' form embodying plaintiff's device so improved, in competition with the plaintiff's skirt form which did not contain the defendants' improvement, sold more freely than plaintiff's at slightly higher prices than plaintiff's—that is, it brought from $2.50 to $3, while plaintiff's iron-post form brought from $2 to $2.50 and wood-post form from $1.50 to $2.

The defendants' improvement was not such a device as could give any value to a skirt form, having no expanding devices within it upon which it could operate.

The plaintiff's expanding device was absolutely necessary to it to give it any sale, nor does it appear that there is any other expanding device for skirt forms on which the defendants' device can operate or with which it can be employed which is open and free for them to use and employ.

For such profits as the defendants secured by this appropriation of the plaintiff's patent or for the damages thereby coming upon the plaintiff by loss of sales of his own invention the defend-

553 ants are to account. If the defendants' device added to these profits any essential part of them, the defendants should have proved the amount of such added profits in their own interest after having stated their total profits to the master in their statement on file. There was no such proof made, and the added expense of manufacture necessary would rather indicate a lessening of profits.

The profits which the defendants admit they made on these skirts are sixty cents each and $1,576.80 in the whole.

There is no proof in the case of error, if any, in this statement of defendants' profits upon these skirts.

The counter-evidence that the materials used are figured a "trifle high" at some periods of time covered by the accounting does not furnish the master with any basis for their reduction for the whole period, and I therefore find that the defendants have made a correct statement of their profits in this regard.

I find these sales damaged the complainant in so much as they were sold to his customers who had been purchasing skirts containing his expanding device previously to the number of 2,317 and to

the extent of the profits that he would have made upon the same number of skirts had he himself sold them. I find upon the evidence of Mr. Everett Morss, a very careful and intel-igent witness, corroborated in a general way by C. A. Morss and Mr. John Hall, that the complainant would have made upon this number of sales, if they had been all wood-post skirts, 87 cents each and $2,015.79 in the whole. If they had been all iron-post skirts he would have made one and $\frac{14}{100}$ dollars ($1.14) each and $2,614.38 in the whole. As there is no certain proof of the number of each kind there would have been in such a number of sales, I shall find that he would have certainly made the first-named or least profit.

554 As to the 3,364 full-figure forms sold during the same time, the defendants admit their profits upon the sale of them to have been $1.08 each and $3,633.12 in the whole.

I find that the device of the plaintiff's patent in suit was embodied in all these figures in the same way as in defendants' skirt, to which was added the defendants' knob at the top upon a central screw-threaded rod for expanding and holding at all points the plaintiff's expanding device, and such addition was entirely useless unless so organized with the plaintiff's patent in suit; that the plaintiff's expanding device in suit, both in bust and the skirt, was a valuable element of defendants' forms and contributed largely to their sales, but that there was in these full forms other important and prominent features, which likewise contributed largely to their sales and added much to the value of the structure in use, and therefore I cannot find from the evidence that all the profits made by the defendants belong or are due to the plaintiff's patent in suit; neither is there evidence in the case from which I can find the proportion of the amount of stated profits belonging or attributable to the complainant's patented device and what to the devices patented by the defendant- and unpatented which are embodied in this dress form. There is no evidence from which I can separate the one from the other, and under such circumstances, if the plaintiff should be adjudged profits, only nominal profits could be given.

As to damages resulting to the plaintiff by the loss of sales of his full or complete form in each instance where one of these forms were sold to his previous customers, I cannot find that he was so damaged. While he undoubtedly suffered a great loss of sales by such interference, the evidence will not establish the fact that he lost the whole number of such sales for such cause, nor is

555 there any evidence which determines what number of sales was so lost.

The defendants' full-figure form was in many respects a very superior form. The whole figure was firmer, stronger, and fully as graceful as that of the plaintiff, and also employed in its construction a papier-maché bust, which kept its shape better and was far preferable in general appearance and for fitting purposes than one made of wires.

The complainant's selling agents admit that there was a large enquiry in the trade for forms containing these papier-maché busts, and that the matter of incorporating such a bust in the plaintiff's

forms in order to meet the demands of the trade was suggested by customers; from all of which it is certain that although the plaintiff's device in suit was a very desirable element in the trade and still more desirable when improved by expanding mechanism operating at the top as the defendant organized it in all of his forms, still that the papier-maché bust was nearly if not quite as valuable an element, and it seems fair to presume from the evidence that this bust made as many of defendants' sales as did the plaintiff's device, and it is absolutely — that defendant did not make all or nearly all his sales to the complainant's previous customers because of the expanding devices of the hip portion of the skirt.

Nor can I find the same fact that I have found in regard to the defendants' skirt form—that the plaintiff's expanding device was absolutely necessary to give it any sale and that it would have had no great sale or commercial value without it. On the contrary, I find that it would have undoubtedly had a very considerable sale if it had no expanding devices whatever at the hip of the skirt. The evidence shows that the Everett dress form was on the market at the time the defendants' form was given to the trade and was selling at the rate of 11,500 a year, for $7.50 apiece and up-
556 wards, and the expanding devices of this form were scarcely worth naming and they gave it little or no advantage over a solid or non-expanding skirt. When the forms of complainant and defendant came on the market the sales of the Everett form declined rapidly, chiefly because of their superior expanding devices, but there is nothing in the testimony showing what or what proportion of the previous customers of the Everett were secured by the complainant and what by the defendants, but there can be no doubt but that defendants' form would have taken a large portion of trade which this form was then supplying and which the evidence shows was largely for the display of garments on sale had it been a non-expanding form.

As the sales of these forms to plaintiff's customers were not entirely or chiefly because they embodied the plaintiff's patent in suit and there is no evidence to show definitely how many of them were sold because of it, there is no basis for other than nominal damages. If the court should be of the contrary opinion and should find that the plaintiff's patent in suit as organized in defendants' full forms alone sold them to complainant's previous customers in direct interference with plaintiff's trade, then I find that defendants sold 2,938 of such interfering forms, and that plaintiff's loss of sale on each was $1.93, and in the whole $5,670.34.

During the period of the accounting it is also found that the defendants sold 1,861 dress forms like Defendants' Exhibit A. These forms embodied the plaintiff's patent in suit in much the same way as did defendants' skirt and are similar in general construction to defendants' full-figure form, there being only certain changes in the connections of the expanding devices not affecting in operation the general contour or value of the form. 1,786 of these forms were also sold directly to the plaintiff's previous customers, but for sub-

stantially the same facts which I have found and reported as
557 to the defendants' complete figure and which I find to be true also in regard to the construction and completion of such forms as Exhibit A, I find that the profits and damages arising from such sales are nominal only. If the plaintiff is entitled to damages for such interfering sales, then he should have $1.93 on each and $3,446.98 in the whole.

The defendants also made and sold during the period of accounting 927 skirt forms like Exhibit B. I find that these embody the device of the second claim of the plaintiff's patent in suit and the same way in which it is organized in defendants' skirt, and are saleable because of it chiefly and mainly, and that defendants made upon such sales a profit of 37 cents each on the first 721 of them, and afterwards, by reason of advancing the price 78 cents, on the remaining 206 of them, and in the whole a profit of $427.45.

I find also that by such sales to the plaintiff's previous customers they deprived the plaintiff of his profits on 745 skirt forms made by him which otherwise he would have sold to said customers, and that his profit on each of said forms, if they were forms having wood posts, would have been 87 cents each and $648.15 in the whole. I cannot certainly find from any evidence in the case that it would have taken any other of the plaintiff's forms to have supplied that demand, although it is probable that it would have taken $\frac{2}{3}$ of said number of 745 of iron-post forms on which the profit to the plaintiff would have been $1.14 each and $849.30 in the whole.

The defendant- also made and sold during the period of the accounting 4,472 skirt forms like Exhibit C. These embody, with an evident attempt to counterfeit in appearance, the device of the second claim of the plaintiff's patent, and it constitutes their entire value as an article of commerce, without which they would have had little, if any, sale.

The defendants admit profits on the whole of these forms
558 at the rate of 60½ cents each and $2,705.56 in the whole.

The damages to the complainants of such infringing sales of this form as went into the hands of his previous customers, to wit, 3,869 forms, at the plaintiff's lowest profit on any form sold by him embodying the patent in suit, would have been 87 cents each and $3,366.03 in the whole.

The defendants also made and sold prior to December 1, 1888, 620 baby drapers embodying plaintiff's patent in suit on which they made profits of 18 cents each and $111.60 in the whole. These were all sold to previous customers of the complainant and caused a loss to him of the profits on the sale of 620 plaintiff's skirts of 87 cents each and $539.40 in the whole.

Since December 1, 1888, the defendants admit that they have made and sold ($125 \times 1\frac{1}{2} = 187$) 187 forms like Exhibit B, on which his profits have been 78 cents on each and in the whole $145.86.

Of these 150 were sold to complainant's previous customers, and the plaintiff so directly lost the same number of sales of his own skirt on which he would have made 87 cents each and $130.50 in the whole.

Since December 1, 1888, the defendants have also sold 750 forms like Exhibit C, on which they have made a profit of 60½ cents each and $453.75 in the whole. By such infringing sales the plaintiff lost the sale of his skirt form to the same number as defendants sold of these forms to plaintiff's previous customers, which was 582, and the plaintiff lost thereby 87 cents on each and $506.34 in the whole.

A comparison of the profits made by the defendants and of the loss or damage suffered by the complainant is as follows:

559

Profits of Defendants.

2,628	defendants' skirt form at 60c.	1,576	80
721	" Exhibit B at 37c.	266	77
393	" " " 78c.	306	54
5,222	" " C, 60½	3,159	31
620	" baby, 18c.	111	60
	In the whole	$5,421	02

The damage to the plaintiff by such of these sales as went direct to his customers are, on—

2,317	defendants' skirt form at 87c.	2,015	79
895	Exhibit B at 87c.	778	65
4,451	" C at 87c.	3,872	37
620	" Baby at 87c.	539	40
	In the whole	$7,206	21

I therefore find that the complainant is entitled to recover of the defendants $5,421.02, being the profits made by the defendants on the sale of the infringing goods, and $1,785.19 damages in excess thereof, so as to make the full amount of $7,206.21 as the sum of profits and damages which he shall recover.

I further find that the sales of skirt forms like Exhibit Plaintiff's Skirt by the complainant have been heretofore in the proportion of four wood-post skirts and five iron-post skirts out of every nine.

That it is a fair inference from the fact that complainant's loss of sales of 8,263 plaintiff's skirt forms which he has suffered by the sales of defendants' various infringing skirt forms would have been supplied by the complainant in the same proportions, and that if the court is of the opinion that the master is entitled to find such fact from such proof, then the master, in that alternative, finds that five-ninths of the sales of said 8,263 dress forms would have been iron-post forms, and the complainant's damages by loss of sales of each of said forms would have been $1.14 in such case upon ⅝ (4,591) of said forms, instead of 87c., a difference of 27c. each and
560 $1,239.57 in the whole, which in that case should be added to plaintiff's profits and damages as heretofore found.

The master finds that at all times during all the periods covered by the three suits referred to him that the complainant was amply equipped with means, men, and machinery to have promptly sup-

plied all the demands of the trade for adjustable skirt and dress forms; that the complainant's forms were mainly, three-quarters or more, sold by Ruel R. Appleton or by himself as Hall's Bazaar Form Company as the general selling agent of the complainant, and the remainder were sold by complainant himself, Ufford & Son, of Boston, Bowen, of Providence, and others.

The master further finds that the defendants in putting their goods upon the market sought the same channels of introduction and advertisement which the complainant had already employed, and so in a peculiar and direct manner brought his interfering forms in direct competition with those of the plaintiff.

The defendants' manner of putting their form C upon the market was extremely harmful and unnecessarily damaging to the plaintiff's business and, in the opinion of the master, inflicting upon the plaintiff extraordinary damages.

During the period covered by the suit No. 316, law, from October 12th, 1880, to April 27th, 1886, the defendants sold 666 skirt forms like defendants' skirt containing plaintiff's patent in suit and, for reasons heretofore given in the equity suit No. 538, saleable alone because of it. They made a profit of 60c. each and $399.60 in the whole. They sold 589 of these forms to plaintiff's previous customers, thereby depriving the plaintiff of the profits on the same number of skirt forms, which at the lowest or wood-post-skirt price would have yielded him a profit of 87c. each and $512.43 in the whole, and which I consequently find he is entitled to recover of the de-
561 fendants as damages. During the same time defendants sold 1,358 full-figure forms like Exhibit Defendants' Complete Form containing plaintiff's patent in suit, both in bust and skirt, organized as in Exhibit Defendants' Skirt, on which defendants' profits were $1.08 each and $1,137.24 in the whole. Of these, 1,222 were sold to plaintiff's previous customers, to his loss 1.93 on each and $2,358.46 in the whole, but for which loss, for reasons heretofore given, the plaintiff is only entitled to nominal damages.

I find also that plaintiff could have supplied the entire demand at all times with wooden-post skirt forms or iron-post skirt forms; that he ordinarily and usually sold to the trade four wood-post forms to every five iron-post forms, and that such had been the relative proportion of the two kinds of posts in his prior sales, and that if the court shall be of the opinion that the master is entitled to find from such proof the fact that the plaintiff would have sold this same proportion relatively of these two kinds of forms, then the master finds that of said skirt forms $\frac{2}{9}$ would have been iron-post forms and the plaintiff lost $1.14 profit upon each of said $\frac{2}{9}$, or 27c. more than is hereinbefore computed on each of said $\frac{2}{9}$, to wit, $88.29 in the whole.

During the period covered by the suit at law No. 336, April 27, 1886, to Nov. 16, 1886, the defendants sold 477 skirt forms like Exhibit Defendants' Skirt Form containing plaintiff's patent in suit, and which because of the same facts which are found set forth in the equity suit No. 538 were saleable alone because of it. They made a profit of 60c. each and $286.60 in the whole. They sold 429

of these forms to plaintiff's previous customers, thereby depriving the plaintiff of the profits upon the same number of his own skirt forms which he would have made and sold but for the said
562 infringing sales of the defendants and upon which their profits would have been 87 cents on each and $373.23 in the whole, which I consequently find he is entitled to recover of the defendants as damages. During the same time defendants sold 1,053 complete forms like Defendants' Complete Form, containing plaintiff's patent in suit in waist and skirt, on which defendants' profits were $1.08 each and $1,137.24 in the whole. Of these 940 were sold to plaintiff's previous customers to his loss, $1.93 on each and $1,814.20 in the whole, but for which loss, for reasons heretofore given, the plaintiff is only entitled to nominal damages.

I find also that plaintiff could have supplied the entire demand of the trade for such forms at all times during said periods.

I also find that he ordinarily and usually sold to the trade four wood-post forms to every five iron-post forms, and that such had been the relative proportions of the two kinds of posts in his prior sales, but that proportion was not certain to exist in any particular number of sales, and that if the court shall be of the opinion that the master is entitled to find from such proof the fact that the plaintiff would have sold the same proportion, respectively, of the two kinds of forms, then of said skirt forms five-ninths would have been iron-post forms, and the plaintiff would have lost $1.14 on each of said five-ninths, or twenty-seven cents more on each of them, being $62.26 in the whole to be added to said $373.23.

After the master had found substantially the findings hereinbefore set forth and had advised counsel thereof, upon a further hearing then had upon certain motions to modify the findings in certain respects made by both parties, the defendants' counsel moved to reopen the accounting for the purpose of admitting evidence of the fact that an expanding device not included in plaintiff's patent was open and free to the defendants to be used and accomplished
563 the same results, together with evidence of the cost of such expanding mechanism. Defendants' counsel also offered in evidence letters patent of the United States No. 373,988, to William H. Knapp, dated Oct. 29, 1887; also a dress form claimed to be made in substantial accordance therewith, which was marked Knapp's latest and is returned herewith, and offered to prove by Wm. H. Knapp that the same have been continuously made and sold by the defendants since January 1, 1887, but the master denied the said motions of defendants' counsel and refused to reopen the accounting or to receive said further evidence.

All of which is respectfully submitted.

Hartford, February 25th, 1889.

E. E. MARVIN,
Master and Committee.

Master's fees and disbursements as per schedule annexed, $1,017.19.

564 *Schedule of Master's Fees and Disbursements.*

1888.	Place.	Expenses.	Per diem.
May 8.	New Haven	2 71	20 00
10.	"	2 36	20 00
14.	"	2 96	20 00
17.	"	3 31	20 00
21.	Boston	11 09	20 00
July 4.	Hartford	----	15 00
9.	Boston	----	20 00
10.	"	----	20 00
11.	"	----	20 00
12.	"	----	20 00
13.	"	----	20 00
14.	"	40 45	20 00
Aug. 2.	"	----	20 00
3.	"	----	40 00
4.		20 80	20 00
21.	Hartford	----	15 00
22.	"	----	15 00
23.	"	----	15 00
Sept. 5.	New York	----	20 00
6.	"	----	20 00
7.	"	----	20 00
8.	"	----	20 00
9.	"	----	20 00
10.	"	40 80	20 00
Nov. 13.	"	----	20 00
14.	"	----	20 00
15.	"	----	20 00
16.	"	----	20 00
17.	"	----	20 00
19.	"	----	20 00
20.	"	----	20 00
21.	"	----	20 00
22.	"	54 80	20 00
Dec. 20.	Hartford	----	15 00
1889.			
Jan. 15.	"	----	15 00
26.	"	----	15 00
28.	"	----	15 00
29.	"	----	15 00
30.	"	----	15 00
31.	"	----	15 00
Feb. 8.	"	----	15 00
9.	"	----	15 00
11.	"	----	15 00
22.	"	----	15 00

Schedule of Master's Fees and Disbursements—Continued.

1889.	Place.	Expenses.	Per diem.	
Feb. 23.	Hartford	----	15 00	
25.	"	----	15 00	
				835 00
1888.				
Dec. 13.	Paid Adams Express Co. delivering exhibits	3 00		
				182 19
				$1,017 19

565 HARTFORD, *March* 8, 1889.

After most of the proofs were taken it was agreed between the counsel of the respective parties that such proofs for convenience ought to be printed, and that each party would pay half the cost of so doing. In pursuance of such requirement and agreement all the proofs taken by the master were printed by him. The cost of so doing was $395.94, of which each party paid half.

E. E. MARVIN, *Master, etc.*

HARTFORD, *March* 19, 1889.

As to forms like A, B, C, and baby draper, which have been held or taken herein to embody the plaintiff's patent in suit, the master states that the defendants' solicitor in submitting the account of the numbers of them made and sold by the defendants, to whom sold, profits, etc., submitted only the question of profits and damages and did not admit infringement, but claimed to leave that question for the court, and that issue was not argued by the defendants' solicitor before the master.

E. E. MARVIN, *Master, etc.*

And on the 23rd day of March, 1889, defendants' exceptions to report of master and committee *was* filed in the words and figures following, viz:

566 Circuit Court of the United States, District of Connecticut.

CHARLES A. MORSS *vs.* WILLIAM H. KNAPP *et al.* } No. 316. Law.

JOHN HALL *vs.* WILLIAM H. KNAPP *et al.* } No. 336. Law.

CHARLES A. MORSS *vs.* WILLIAM H. KNAPP *et al.* } No. 538. In Equity.

Defendants' Exceptions to the Findings of Edwin E. Marvin, Esq., Committee and Master.

The defendants except to the findings of the committee and master herein in the following particulars, viz:

1. The committee and master having found that "it does not appear by the evidence that solid skirts of such form" (meaning solid skirts of forms similar to the defendants' skirts) "have or ever did have any considerable sale or great market value," the defendants except to said finding (*a*) because it does appear from the evidence that such skirts had substantial sale and market value, and (*b*) because the burden of proof was not upon the defendants to prove that the sales thereof were considerable or the market value great.

2. The defendants except to the finding of the committee
567 and master that the adjustable device on the defendants' skirt forms was embodied in said forms for the purpose of selling them and did in fact sell them, and that the plaintiff's expanding device was absolutely necessary to the defendants' skirt form to give it any sale, whereas the committee and master should have found that the Everett dress form, a skirt form similar in form to the defendants' skirt form and not embodying the plaintiff's expanding device, was selling at the rate of over five thousand skirt forms a year when the defendants' skirt form was put on the market, and that the plaintiff's expanding device was not absolutely necessary to the sale of such skirt forms.

3. The defendants except to the finding of the committee and master that "if the defendants' device added to these profits any essential part of them, the defendants should have proved the amount of such added profits," whereas the committee and master should have found that, since the plaintiff's expanding device formed only a part of the defendants' skirt forms, the burden of proof was on the plaintiff to show what, if any, portion of the defendants' profits was attributable to the plaintiff's expanding device.

4. The defendants except to the finding of the committee and master that the "defendants' improvement was not such a device as could give any value to a skirt form having no expanding devices within it upon which it could operate."

5. The defendants except to the finding of the committee and

master that there was no proof what, if any, portion of the
568 defendants' profits were due to the defendants' additions to and improvements upon the patented invention, whereas the committee and master should have found that, since the defendants' skirt forms sold in the same market at higher prices than the plaintiff's, such excess of price was evidence of the market value of the defendants' additions and improvements.

6. The defendants except to the finding of the committee and master that the added expense of manufacture due to the defendants' additions and improvements indicated a lessening of profits, whereas the committee and master should have found that, since such additions and improvements enabled the defendants' skirts to sell more freely than plaintiff's at higher prices than plaintiff's, such profit- as the defendants in fact made were partly due to said additions and improvements.

7. The defendants except to the finding of the committee and master that it does not appear that there is any other expanding device for skirt forms on which the defendants' device can operate or with which it can be employed and free for them to use and employ, whereas the committee and master should have found that said device was in fact used in the defendants' skirts to operate single as well as double sets of braces, and that said single sets of braces were open and free to the defendants to use and employ.

8. The defendants except to the finding of the committee and master that the plaintiff is entitled to recover in these actions
569 as damages the total profit which the plaintiff would have made if he had sold to his prior customers, so called, who had been purchasing from him, all the sales which the defendants made to said customers, (*a*) because the master and committee, having found that the defendants' additions and improvements enabled the defendants' skirts to sell more freely than the plaintiff's, ought not to find that the plaintiff would have sold to said customers as many as the defendants sold; (*b*) because, the plaintiff's skirt being made under three separate patents, the committee and master ought not to allow the plaintiff in these actions, as damages, the total profit which he would have made from sales of skirt forms embodying such other patented improvements; (*c*) because the plaintiff's skirt being made under four claims of the patent in suit, and the defendants' being found to infringe upon one claim only, the committee and master ought not to allow the plaintiff in these actions, as damages, the total profit which he would have made from sales of skirt forms embodying the patented improvements described in the other claims.

9. The defendants except to the finding of the committee and master that the defendants' sales to the plaintiff's so called customers deprived the plaintiff of an equal number of sales, because there is no evidence that the plaintiff's sales to any single customer decreased to any specified extent.

10. The defendants except to the finding of the committee
570 and master that the defendants' sales to the plaintiff's so-called customers deprived the plaintiff of sales of an equal

number of dress forms on which he would have made an average profit of 87 cents.

11. The defendants except to the finding of the committee and master that the sales made by the defendants subsequent to September, 1886, were in any substantial part made to customers of the plaintiff to whom the plaintiff was able to sell skirt forms.

12. The defendants except to the finding of the committee and master that if the defendants had not sold their skirt forms to the plaintiff's so-called customers the demand for skirt forms from said customers would have been wholly supplied by the plaintiff, whereas the committee and master should have found that there was no evidence that said customers were exclusive dealers in plaintiff's and defendants' skirt forms, and that the Everett and Diamond skirt form were both on the market and largely sold at the time when the defendants put their skirts on the market.

13. The defendants except for that the master and committee should have found that some portion of the sales made by the defendants to former customers of the plaintiff's displaced Everett and Diamond skirt forms.

14. The defendants except for that the committee and master should have found that if defendants' skirt forms had not been in the market some portion of the sales of said skirt forms to former customers of the plaintiff would have been supplied by the Everett and Diamond forms.

15. The defendants except to the finding of the committee and master that sales of skirt forms like Exhibit Plaintiff's Skirt by the complainant have been in the proportion of four wood-post skirts and five iron-post skirts out of every nine.

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16. The defendants except to the finding of the committee and master that it is a fair inference from that fact that the sales claimed to have been lost by the complainant would have been sales in said proportion.

17. Defendants except to the finding of the committee and master that as to iron-post skirts the plaintiff is entitled to recover, if he recovers at all, $1.14 instead of 87 cents, whereas the committee and master should have found that such additional profit over and above the 87 cents was not due exclusively to the presence of the expanding mechanism, but to other differences between said figure and the wood-post figure.

18. The defendants except to the finding of the master and committee that the plaintiff was at all times amply equipped with means, men, and machinery to have promptly supplied all the demands of the trade for adjustable skirt and dress forms.

19. The defendants except to the finding of the master and committee that defendants' manner of putting their form "C" upon the market was extremely harmful and unnecessarily damaging to the plaintiff's business and, in the opinion of the committee and master, inflicting upon the plaintiff extraordinary damages, whereas the committee and master should have found that there was no evidence that the plaintiff's business was affected thereby, and that the only damage, if any, was damage done

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to R. R. Appleton, a dealer in dress forms, who bought goods from the plaintiff and sold them at his own risk and at increased prices, and that the only damage claimed by said Appleton was loss of sales, and that the amount of loss on such sales was not proved, but that the master and committee allowed as compensation for said loss of sales the total profit which the plaintiff would have made had he sold to said Appleton's customers all the skirts which the defendants sold to said customers.

20. The defendants except to the finding of the master and committee that the form Exhibit "A" embodies the plaintiff's expanding mechanism as claimed in the patent in suit.

21. The defendants except to the refusal of the master and committee to reopen the accounting or receive further evidence of the fact that an expanding device not included in the plaintiff's patent was open and free to the defendants to be used and accomplished the same results, together with the cost of such expanding mechanism; also to the refusal of the master and committee to receive in evidence letters patent of the United States No. 373,988, to William H. Knapp, dated October 29th, 1887; also to the refusal of the master and committee to receive the evidence of William H. Knapp that dress forms made in accordance with said patent had been continuously made and sold by the defendants since January, 1887.

JOHN K. BEACH,
Sol. for Def'ts.

573 And on the 27th day of March, 1889, complainant's exceptions to report were filed in the words and figures following, viz:

United States Circuit Court, District of Connecticut.

CHARLES A. MORSS *vs.* WILLIAM H. KNAPP *et al.* } No. 316. Law.

JOHN HALL *vs.* WILLIAM H. KNAPP *et al.* } No. 336. Law.

CHARLES A. MORSS *vs.* WILLIAM H. KNAPP *et al.* } No. 538. Equity.

Before Edwin E. Marvin, Esquire, committee and master in chancery.

Complainant's Exceptions.

And now comes the complainant in the above-entitled causes and excepts to the findings of the committee and master and his failures to find, and alleges as grounds therefor the following:

1. That the committee should have found in each of said cases

that the complainant's invention set forth in the second claim of the patent in suit constituted the chief part and value of the skirt portion of all the defendants' full figures.

2. That he should have found that the complainant's said invention constituted the chief part and value of the bust portion of all the defendants' full figures.

574 3. That he should have found that the complainant's said invention constituted the chief part and value of all the defendants' full figures.

4. That he should have found that the complainant was entitled to all the profits reported by the defendants which they made upon the manufacture and sale of the full figures.

5. That he should have found that the complainant was entitled to the profits made by the defendants upon each full figure, equal to the amount reported by the defendants as made upon each of the skirt forms like the "Exhibit Defendants' Skirt Form" or "Defendants' Form B."

6. That he should have found that the defendants should prove affirmatively the proportion of the amount of stated profits belonging or attributable to additions made by them to the complainant's patented device in the full figures sold by the defendants, and that the complainant was entitled to the entire profits unless the defendants prove the same.

7. That he should not have found that the defendants' full figures would have had a large sale without any expanding devices, but should have found that the defendants' sales of full figures were chiefly due to their possession of the complainant's invention.

8. That in estimating the damages and profits charged to the complainant he should have awarded the profits which the complainant would have made upon the number of skirt forms which he would have sold but for the defendants' sales, and in addition thereto the profits made by the defendants upon the number of skirt forms sold by them in excess thereof.

9. That he should have found that of the sales of skirt forms which the complainant would have made but for the sales of the defendants five-ninths would have been iron-post skirt forms

575 and four-ninths wood-post skirt forms, and he should have awarded as damages to the complainant profits which he would have made upon sales on that basis.

10. That in each of the two law cases in addition to the sum reported as damages the master should report a sum equal to the profits made by the defendants upon skirts sold by them which did not interfere with or take the places of forms which the plaintiff would have sold if the defendants had not been in the market.

11. That the master should report as damages in each of the two law cases upon the full figures sold by defendants a sum equal to that which the defendants report they made as profits upon each figure.

12. That the master should report as damages in each of the law cases upon the full figures sold by defendants a sum equal to the profits

reported by the defendants as made by them upon skirts like defendants' skirt form or form "B."

13. That the master should find that the sales of plaintiff's full figures as compared with his sales of skirt forms decreased to a considerable extent whenever the defendants' full figures came into the market and by reason thereof.

PAYSON E. TUCKER,
CHAS. F. PERKINS,
Sol'rs for Complainant.

And on the 9th day of May, 1889, the parties, by their respective counsel, duly appeared, and said exceptions to master's report were fully heard; and on the 26th day of July opinion of court thereon was filed in the words and figures following, viz:

576 Circuit Court of the United States for the District of Connecticut.

CHARLES A. MORSS *vs.* UNION FORM COMPANY.	No. 316. Law.
JOHN HALL *vs.* WM. H. KNAPP *et al.*	No. 336. Law.
CHARLES A. MORSS *vs.* WILLIAM H. KNAPP.	No. 538. Equity.

SHIPMAN, *J.*:

These are exceptions to the committee's and master's report in two actions at law and one suit in equity, which were based upon the infringement of letters patent No. 233,240, dated October 12, 1880, to John Hall, for an adjustable dress form. A description of the invention and the claim which was infringed are given in Morss *vs.* Knapp, 37 Fed. Rep., 351. By agreement of the parties the accounting upon the bill in equity was referred to Edwin E. Marvin, Esq., as master, who was also appointed committee to ascertain the damages in the actions at law. The time which was covered by the different suits was as follows: By No. 316, from October 12th, 1880, to April 27th, 1886; by No. 336, from April 27th, 1886, to Nov. 16th, 1886, and by the accounting of No. 538, from Nov. 16th, 1886, to February 25th, 1889. The three cases were heard together upon the stipulation that all the proofs should be con-
577 sidered to be taken in each of said causes so far as the same were competent and relevant.

In No. 538 the master found the profits of the defendant to be $5,421.02 and the proved damages to the complainant to be $7,206.21. The damages in No. 306 and No. 336 he found to be respectively $512.43 and $373.23. A larger sum in damages in each of these

cases he also found in the alternative if the court should be of opinion that the evidence was sufficient to justify it. This will be considered hereafter. Both parties except to the findings of the committee and master.

Two general classes of forms were made by the defendants as well as by the complainants—a skirt form and a complete form. In order to understand the bearing of the several exceptions it is necessary to give the findings of the master in regard to the damages and profits by the sale of each of these forms, and I think it is important to give them in his own language:

"I find both these forms contain the expanding device of the second claim of the plaintiff's patent in this suit—of the skirt. It supplies the chief element of the structure and gives to it its value as a marketable article.

It does not appear by the evidence that the solid skirts of such form have or ever did have any considerable sale or great market value, but for skirts adjustable in a greater or less degree to the human form it does appear that there is a large and increasing demand for the purposes of draping and fitting of garments.

The adjustable device employed as to these particular skirts belonged to the complainant and was embodied in them by the defendants for the purpose of giving them sale, and did in fact sell them.

The defendants superadded to the complainant's invention in suit a firmer waist, a substantial foot on castors, also a very simple,
578 convenient, and valuable device for operating the expanding mechanism of it, consisting of a slow-threaded screw on the central rod rotated or operated by a handle or knob at the top of the form, whereby the mechanism of the plaintiff's patent could be conveniently expanded to fit any form and at all stages of the adjustment be securely and firmly locked and held in position and in proper form. This device was an improvement for the operation of the plaintiff's device, which, as organized in plaintiff's skirt, operated by hand and with considerable inconvenience and required to be locked and held at all points desired by the use of several set-screws. The plaintiff's device was more valuable with this improvement added to it than without it, and the defendants' form embodying plaintiff's device, so improved, in competition with the plaintiff's skirt form, which did not contain the defendants' improvement, sold more freely than plaintiff's, at slightly higher prices than plaintiff's—that is, it brought from $2.50 to $3.00, while plaintiff's iron-post form brought from $2 to $2.50 and wood-post form from $1.50 to $2. The defendants' improvement was not such a device as could give any value to a skirt form having no expanding devices within it upon which it could operate.

The plaintiff's expanding device was absolutely necessary to it to give it any sale, nor does it appear that there is any other expanding device for skirt forms on which the defendants' device can operate or with which it can be employed which is open and free for them to use and employ.

For such profits as the defendants secured by this appropriation

of the plaintiff's patent or for the damages thereby coming upon the plaintiff by loss of sales of his own invention the defendants are to account. If the defendants' device added to these any essential part of them the defendants should have proved the amount
579 of such added profits in their own interest after having stated their total profits to the master in their statement on file. There was no such proof made and the added expense of manufacture necessary would rather indicate a lessening of profits.

The profits which the defendants admit they made on these skirts are sixty cents each and $1,576.80 in the whole."

"As to the 3,364 full-figure forms, sold during the same time, *i. e.*, from Nov. 16, 1886, to April 20, 1888, the defendants admit their profits upon the sale of them to have been $1.08 each and $3,633.12 in the whole.

I find that the device of the plaintiff's patent in suit was embodied in all these figures in the same way as in defendants' skirt, to which was added the defendants' knob at the top upon a central screw-threaded rod for expanding and holding at all points the plaintiff's expanding device, and such addition was entirely useless unless so organized with the plaintiff's patent in suit; that the plaintiff's expanding device in suit, both in bust and the skirt, was a valuable element of defendants' forms and contributed largely to their sales, but that there were in these full forms other important and prominent features which likewise contributed largely to their sales and added much to the value of the structure in use, and therefore I cannot find from the evidence that all the profits made by the defendants belong or are due to the plaintiff's patent in suit, neither is there evidence in the case from which I can find the proportion of the amount of stated profits belonging or attributable to the complainant's patented device and what to the devices patented by the defendant and unpatented which are embodied in this dress form.

580 There is no evidence from which I can separate the one from the other, and under such circumstances if the plaintiff should be adjudged profits, only nominal profits could be given.

As to the damages resulting to the plaintiff by the loss of sales of his full and complete form in each instance where one of these forms were sold to his previous customers, I cannot find that he was so damaged. While he undoubtedly suffered a great loss of sales by such interference, the evidence will not establish the fact that he lost the whole number of such sales for such cause, nor is there any evidence which determines what number of sales was so lost.

The defendants' full-figure form was in many respects a very superior form. The whole figure was firmer, stronger, and fully as graceful as that of the plaintiff, and also employed in its construction a papier-maché bust, which kept its shape better and was far more preferable in general appearance and for fitting purposes than one made of wires.

The complainant's selling agents admit that there was a large enquiry in the trade for forms containing these papier-maché busts, and that the matter of incorporating such a bust in the plaintiff's

forms in order to meet the demands of the trade was suggested by customers, from all of which it is certain that although the plaintiff's device in suit was a very desirable element in the trade and still more desirable when improved by expanding mechanism operating at the top, as the defendant organized it in all of his forms, still that the papier-maché bust was nearly, if not quite, as valuable an element, and it seems fair to presume from the evidence that this bust made as many of the defendants' sales as did the plaintiff's device, and it is absolutely certain that defendant did not make all or nearly all his sales to the complainant's previous customers because of the expanding devices of the hip portion of the skirt.

581 Nor can I find the same fact that I have found in regard to the defendants' skirt form, that the plaintiff's expanding device was absolutely necessary to give it any sale, and that it would have had no great sale or commercial value without it; on the contrary, I find that it would have undoubtedly had a very considerable sale if it had no expanding devices whatever at the hip of the skirt."

The same difference or distinction was made in regard to the damages in the actions at law and in regard to the sales after April 20, 1888. No damages or profits were given upon the 7,636 complete forms which the defendants sold.

Ten of the complainant's thirteen exceptions relate to this portion of the report, and it is contended that the defendants should be required to pay all the profits which they made upon the full figures, or should pay upon these forms at least a sum based upon the amount which they made upon the skirt form. This contention is upon the ground that the invention of the second claim constituted the chief part and value of the full forms; while it is manifest from an examination of the careful and conservative report of the master that he has no doubt of the fact of a great loss of sales to the complainant from these competing forms and a consequent damage by the infringement, yet that he could not find a basis for the ascertainment of a specific amount of damage arising from the use of the patented invention. My examination of the proofs leads me to the conclusion that, while I do not place quite so much value as he did upon the preference which agents exhibited for the papier-maché bust, and think that without the expanding devices at the hip of the skirt it would not have been so formidable a rival to the

582 complainant's full form as it was, yet I perceive that there is necessarily a haziness about that part of the case which makes it difficult to reach exact and definite results in figures as to the amount of damages or profits resulting from the use of the invention as described in the second claim.

Two other exceptions make the point that, as damages, the master should, in addition to the profits which the complainant would have made upon the number of skirt forms which he was deprived from selling by the defendants' sales, have allowed the profits made by the defendants upon the number of skirt forms sold by them in excess thereof. The master and committee followed the rules in the computation of damages which are laid down in Seymour *vs.*

McCormick, 16 How., 480; Phelps *vs.* Nock, 17 Wall., 460; Buerk *vs.* Imhauser, 14 Blatch., C. C. K., 19, and which are commented upon in Root *vs.* Railway Co., 105 U. S., 189, and allowed only proved damages, and I think that he followed the established rule. The remaining 9th exception, in regard to the sufficiency of the means of ascertaining the number of wooden-post and iron-post forms respectfully which the complainant would have sold but for the infringement, is immaterial, in view of the alternative finding of the master, which will be hereafter considered.

The twenty-one exceptions of the defendants cover the entire case which is stated in the report. The important ones may be divided into three classes. The first contention is that the patented form is but an improvement in the art over pre-existing forms, and that therefore the entire amount of profit which the defendant made cannot be the proper rule of profits. They insist that solid skirt forms existed and had a prominent place and that the Everett form, although to a certain extent an adjustable form, was yet practically a solid form and had a larg-r sale. The first exception is to the finding of the master that it does not appear that solid skirts
583 of the general form of the defendants' have or ever did have any considerable sale or great market value.

Solid entire forms or "dummies" for the exhibition of wearing apparel have long existed, but the patented article was the first dress form which was adjustable to all sizes without change of shape. The Everett form was a primitive affair which had a pretence of adjustability. It was enlarged by pulling away a movable half section from a stationary half section, thus broadening the figure from side to side while keeping it unaltered from front to rear. The shape was radically changed. The solid entire form has still its place in the shops and is also made to order in imitation of the figure of the person who is to use it, but it is not justly a subject of comparison with the patented article, which had a new and distinct character of its own, viz., expansion or adjustment by the described means of a skeleton frame radically in all directions from a common center, and had its own place as an aid in the manufacture of ladies' wearing apparel. In consequence of its appearance in the market the Everett form disappeared. The Everett sales of 11,500 in 1883 diminished until during the year ending in August, 1887, 1,000 were sold, and in the next year, when its manufacturer introduced a new form designed to improve upon its defects, the sales were about 100.

The defendants, secondly, in view of the sales of the Everett form, object to the report because it is found that the complainant's expanding device of the second claim gave to the defendants' skirt form its value as a marketable article and sold it and was necessary to give it any sale. Of the truth of this finding there can be no doubt. The second claim contained the entire new skirt form, which was the skeleton frame radially adjusted in all directions
584 from a common center by the described means, and the defendants' wire structure contained the whole of the second claim and of the complainant's frame and little else, except better and more expensive workmanship and a better and more expensive

equivalent device for operating the expanding mechanism. The defendants' device was the complainant's plus better workmanship and a better selection of equivalent devices to operate the braces.

The third class of exceptions is as to the rule by which profits are to be estimated and to the finding of law that if the defendants' device added to the profits which they made any essential part of them they should have proved the amount of such added profit. The complainant relies upon the rule in Elizabeth *vs.* Pavement Co., 97 U. S., 126, in the case of an entire profit derived from the construction of the patented device as an entirety, that if any distinct profit was realized from the addition of another improvement the burden is upon the infringer to show it. The defendants rely upon the rule in Garretson *vs.* Clark, 111 U. S., 120, that when the patent is for an improvement and not for an entirely new contrivance the burden is upon the patentee to apportion the profit between the patented feature and the unpatented features. As has been before said, the complainant's skirt form was new and distinct from either the "dummy" form or the Everett form. Its entire character consisted in its method of radial expansion without change of shape. The defendants' skirt form has been described. The principle of the Pavement Co. case seems to be the one which is applicable. If not, it is properly found, as required in Garretson *vs.* Clark, that the patented device of the second claim gave to the infringing skirt its value as a marketable article.

The defendants also except to the refusal of the master to
585 open the accounting after it was closed to receive further evidence that an expanding device not included in the plaintiff's patent was open and free to be used and accomplished the same results, and also refused to receive in evidence letters patent to one of the defendants, dated October 29th, 1887. The litigation had been in existence both in this district and in the district of Massachusetts. The accounting commenced May 9th, 1888, and the testimony seems to have been completed Nov. 29th, 1888. During this litigation it is manifest, from the circumstances which surround the case, that all the testimony of importance had been found and presented.

All the exceptions are overruled.

The master found in each action the number of skirt forms which the complainant had been prevented from selling by the defendant-' sales. The complainant's forms were made either with a wooden post or with an iron post. Upon the former he made a profit of eighty-seven per cent. and upon the latter of $1.14 per form. The defendants made iron-post forms only. Their prices were somewhat larger than the complainants' prices for iron-post forms and their profits upon the largest part of their sales were either 60 cents or 60½ cents per form. Five-ninths of the complainant's sales of skirt forms were iron-post forms and four-ninths were wooden-post forms. The master finds in the equity case that it is a "fair inference from the fact that complainant's loss of sales of 8,263 plaintiff's skirt form- which he has suffered by the sales of defendants' various infringing skirt forms would have been supplied by the complainant

in the same proportion, and that if the court is of the opinion that the master is entitled to find such fact from such proof, then the master in that alternative finds that five-ninths of the sales of said 8,263 dress forms would have been iron-post forms and the
586 complainant's damages by loss of sales of each of said forms would have been $1.14 in such case upon five-ninths (4,591) of said forms instead of 87 cents, a difference of 27 cents each." The same facts are found with reference to the damages in the actions at law. I am of opinion that the proof authorizes such fact to be found, except in regard to the 620 "baby drapers" which were sold. Upon such computation the damages in No. 316 will be $600.72 and in No. 336 will be $435.49. The damages in No. 538 will be $8,352.36, being an increase of $1,146.15, and the excess of damages above profits will be $2,931.34.

The complainant has filed a motion for an increase of damages, under the two sections of the Revised Statutes relating thereto, upon the general grounds that the infringement was wilful and counterfeited the appearance of the complainant's form and was accompanied with conduct which indicated a wilful and malicious determination to injure the complainant.

A decree in the Ufford suit in the district of Massachusetts, in which the Knapps were the real defendants, was entered February 23rd, 1888. They continued to manufacture in this district until March 30, 1888, when they were enjoined by decree of this court. They then commenced to sell the forms B, C, and baby drapers, which were not in the Massachusetts case, and continued such sale until January, 1889, although the Domestic Sewing Machine Company, at the suit of the plaintiff, in which suit the Knapps were the real defendants, was enjoined on August 25th, 1888, in Massachusetts against selling B and C. The accounting in the equity suit was until February 25th, 1889. The defendants pertinaciously pushed their goods upon the customers of the complainant and endeavored to deprive them of their former trade, but I do not consider that the statute in regard to increased damages intended to punish this pushing, forceful method of business, and I do
587 not find that with the exception of the interval between February 23rd, 1888, and March 30th, 1888, and between August 25th, 1888, and January, 1889, the infringement was a wilful or wanton violation of the complainant's exclusive rights. During that time they were acting wilfully and the damages should be increased on that account two hundred and fifty dollars.

Payson E. Tucker and Charles F. Perkins, for the complainant; John K. Beach, for the defendants.

In *in* pursuance of the said opinion of the court on the 14th day of October, A. D. 1889, a final decree was passed and filed as follows, viz:

588 U. S. Circuit Court, District of Connecticut.

CHARLES A. MORSS
vs.
WILLIAM H. KNAPP *et al.* } No. 538. In Equity.

This cause having come to be heard upon the report of Edwin E. Marvin, Esq., one of the masters of this court to whom it was referred to ascertain and report an account of the gains, profits, and advantages which said defendants have realized, as well as the damages which complainant has suffered through the unlawful infringement by defendants of the second claim of complainant's letters patent, No. 233,240, dated October 12th, 1880, and issued to John Hall, which report bears date the 25th day of February, 1889, and also upon exceptions taken to the said report on the part of said complainant, and also on the part of said defendants, it is ordered, adjudged, and decreed that all the exceptions to said report of the said master be, and the same hereby are, overruled.

It is further ordered, adjudged, and decreed that the letters patent referred to in the complainant's bill, being letters patent of the United States granted unto John Hall for an adjustable dress form, dated October 12th, 1880, and numbered 233,240, is a good and valid patent, and that the said John Hall was the inventor of the improvements described therein and claimed in the second claim thereof, and that the defendants have infringed the same patent and upon the exclusive rights of the complainant under the same.

And it is further ordered, adjudged, and decreed that the defendants William H. Knapp, Charles L. Knapp, and Clinton I. Hague, and each of them and their and each of their servants, agents, operators, and workmen, be, and they are hereby, perpetually
589 enjoined and restrained from either directly or indirectly making, constructing, using, or vending to others any article substantially similar to any of the exhibits filed in this cause and known therein as Exhibit "Defendants' Complete Form," Exhibit "Defendants' Skirt," Exhibit "A," Exhibit "B," Exhibit "C," and Exhibit "Baby Draper," or any other article constructed and operated in the manner and upon the principles described in said letters patent and referred to in the second claim thereof.

It is further ordered, adjudged, and decreed that the complainant recover of the said defendants his damages as follows, namely:

By reason of the manufacture and sale by defendants of dress forms like said Exhibit "Defendants' Skirt"--	2,363 30
By reason of the manufacture or sale by defendants of dress forms like "Exhibit B"----------	912 90
By reason of the manufacture and sale by defendants of skirt forms like Exhibit "C"----------	4,540 10

By reason of the manufacture and sale by defendants of dress forms like said Exhibit "Baby Draper"	632 60
By reason of wilful infringement as punitive damages	250 00
	$8,698 60
By interest on foregoing amount from date of master's report	330 54
Amounting in all to the sum of	$9,029 14

It is further ordered, adjudged, and decreed that said defendants pay to the said complainant the said sum of nine thousand and twenty-nine dollars and fourteen cents ($9,029.14), damage, and the further sum of six hundred and sixteen dollars and twenty-nine cents ($616.29), his costs in this suit, amounting in all to the sum of nine thousand six hundred and forty-five dollars and forty-three cents ($9,645.43), and that said complainant have execution therefor.

N. SHIPMAN,
District Judge.

590 Seal of Circuit Court, Connecticut. I, Edwin E. Marvin, clerk of the circuit court of the United States for the district of Connecticut, do certify that the foregoing is a true transcript of the original record in the matter of Charles A. Morss *et al. vs.* William H. Knapp *et al.* in this court.

In testimony whereof I have hereunto set my hand and the seal of said court, at Hartford, in said district, this 5th day of November, A. D. 1889.

E. E. MARVIN, *Clerk.*

Endorsed on cover: Case No. 13,918. Connecticut C. C. U. S. No. 286. William H. Knapp and Charles L. Knapp, appellants, *vs.* Charles A. Morss. Filed November 13, 1889.